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REPORT ON H.M. LAND REGISTRY FOR 1956–1957

The inquiry prior to the extension of compulsory registration to Surrey was a milestone in the history of registered land. Most unbiased observers were satisfied that the Land Registry made out its case and most practitioners with reasonably wide experience of both systems prefer the registered. With compulsory registration extended to Oxford, Oldham and Leicester, many provincial solicitors who, so far, have only a nodding acquaintance with the subject will have to gain experience, and it is therefore surprising that there is no really up-to-date comprehensive book on the practice. Undoubtedly, the best at the moment is the third volume of *Key and Elphinstone*, but a precedent book, even with such an admirable introduction, is no substitute for a practice book. We do recommend to all practitioners the purchase of a copy of the Rules. This may seem trite advice, but it is surprising how many have not got copies.

We must confess that we always read the annual report and study the tables with considerable interest. If the report for the year 1956–1957 (H.M. Stationery Office, price 2s.) does not reveal anything startling, the steady expansion of work is noticeable. There was a record number of 3,882 first registrations in non-compulsory areas, a testimony to the genuine popularity of registration of title. This is an increase of no less than 21 per cent. over the previous year. The effect of the credit squeeze, although noticeable in the number of building society charges and notices of deposit (the former down by about one-fifth and the latter approximately halved), does not seem to have affected the number of sales.

Considerable reduction in the times taken to complete transactions is recorded, but we still hope to see a return one day to the pre-war speed. The cost per transaction rose to £1 4s. 11d., an increase of 2s. 3d. (The 1938 figure was 17s. 3d.) The accounts were balanced as a result of the reimposition of half-rate fees on charges accompanying transfers for value, but there is an estimated surplus of only £60,000 on fees totalling one million pounds. It must not be overlooked that official searches of the register and official searches whether land is registered or not are both free, and there is a growing demand for the latter, though, as the Chief Land Registrar remarks, it is very surprising that so little use is made of the free facilities for searching index maps and we wonder whether it is generally known that this can be done through the post.

Mention is made of the fact that there has been a marked increase in the complexity of transactions and we might perhaps pay our personal tribute to the help given by the Land Registry in connection with out of the way dealings. Taking part of land out of a lease and substituting another, and similar transactions, which might be met with a good deal of resistance from practitioners in unregistered land, do not seem to cause the Registry even to falter momentarily.

GIFTS INTER VIVOS AND INVESTIGATION OF TITLE

Every solicitor and articled clerk knows Worldly Solicitor: he embodies the wisdom, knowledge, patience and longevity given to few actual practitioners. In the October issue of *Law Notes* he sets forth in his own inimitable style the effect of the Finance Act, 1957, s. 38, as it affects a purchaser where there has been a gift *inter vivos* within five years of the purchase and, if we may say so with respect, his views seem to be eminently sound. Section 38 is discussed *ante*, pp. 366 to 377. Where there has been a gift of freehold land and the donor dies within five years, prima facie, duty is payable on the value of that property at the date of death and the property becomes charged with the amount of duty. If the donee parts with the property before death and receives full value, the property or money received is treated for death duty purposes as having been given so that duty is payable on that property or money which becomes charged accordingly. Accordingly, on a sale for full value the purchaser is not concerned that there has been a gift within the last five years. Worldly Solicitor, citing *Re Weir and Pitt's Contract* (1911) 55 S.J. 536, says that, where a deed is stamped in accordance with the expressed consideration, it is presumed that the consideration is adequate. Although this decision is doubted in Williams on *Title*, 2nd ed., p. 637, it seems to be generally accepted,

at any rate unless the consideration is so grossly inadequate as to put a purchaser on inquiry.

The position is unaltered in other cases, *e.g.*, where the donee mortgages the property, where a mortgagee from the donee sells the property, where the donee gives the property away and his grantee sells, or where the donee sells at an undervalue. In such cases, it is generally assumed that the charge attaches on death, though *Hanson* does not think so (10th ed., paras. 214 and 842), and it may be that registered land is on a different footing from unregistered, for in the former case the purchaser may not have notice of the facts and, in any event, the Land Registration Act, 1925, s. 73 (1), may afford sufficient protection. Unless, therefore, the original donee has parted for full consideration, a purchaser will require protection where there has been a gift *inter vivos* within five years of the conveyance. The exceptional cases should be dealt with in the contract, and it would not appear necessary for a purchaser to raise the point on preliminary inquiries. If the defect appears on examination of title it can be dealt with then.

Time for Searches

We may, perhaps, be forgiven for drawing attention to an elementary point on searches, but it is quite clear that a number of practitioners is not aware of it. The point is that, in the case of both land charges and Land Registry searches, in calculating the number of days during which searches give protection only working days are to be counted: Law of Property (Amendment) Act, 1926, s. 4 (3); Land Registration Rules, 1930, r. 6. The regulation fourteen days' protection is, therefore, equivalent at ordinary times to three weeks less a day, and at times of holiday to three weeks or more. This does not really matter with regard to searches (although a number of second searches are made unnecessarily), but it does cause a certain amount of inconvenience in the case of priority notices, for they have to be lodged at a correspondingly earlier date. When protection only lasted for two days the mode of calculation was essential, but it is hardly satisfactory today: when restrictive covenants are being imposed the priority notice, to be effective, has to be lodged almost as soon as the contract is signed. One wonders, however, how many priority notices are in fact lodged.

To cover the substantial increase in the Postal rates the subscription for 1958 to The Conveyancer *has had to be increased from 38s. 6d. to £2 5s.*

NOTES ON PART II OF THE LANDLORD AND TENANT ACT, 1954

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(*continued from Volume 20, page 461*)

IV. Intention to Demolish, Reconstruct, etc., as a Ground of Opposition

By paragraph (f) of section 30 (1) of the 1954 Act one of the grounds on which a landlord may oppose an application for a new tenancy is:

> "that on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding."

This paragraph gives rise to a number of important points, some of considerable difficulty, on which there have already been more reported cases than under any of the other paragraphs of the section.

(1) The Substantive Nature of the Intention

The first question is what sort of thing does the landlord have to intend to do to bring himself within this ground. The paragraph assumes that there are buildings on the holding or that the landlord intends to put some there, and is applicable only to such cases. If his intention is to demolish all the buildings he is within the paragraph. If his intention is not to demolish everything but a substantial part of the existing premises he is equally within the paragraph, but there then at once arises the question what is a substantial part. In *Atkinson* v. *Bettinson* (*a*) Hodson L.J. applied to the word "substantial" in this context the remarks made by the House of Lords in *Palser* v. *Grinling* (*b*), giving to the word

(*a*) [1955] 1 W.L.R. 1127. All the cases cited in this article will be found noted in the Notes of Cases in Appendix E of Blundell & Wellings on the *Landlord and Tenant Acts, 1927 and 1954*, and in Appendix E of the Second Permanent Supplement (Part I) to Woodfall's *Law of Landlord and Tenant*.

(*b*) [1948] A.C. 291.

the meaning of considerable, solid or big, and pointed out that it must be left to the judge of fact in each case to decide whether the intended operation satisfies that test. If the substantial part to be demolished is to be something considerable, solid or big, that raises the question whether the whole must satisfy the same test for the intention to demolish it to satisfy paragraph (f). The case may be taken of a holding on which only some very minor structure is erected, such as an attendant's kiosk on a car park. Does the intention to demolish that satisfy the paragraph? It would be anomalous if it did so, for the intention to demolish precisely the same kiosk on a holding on which stood extensive factory buildings clearly would not qualify. The court may well hold that the words " the premises comprised in the holding or a substantial part of those premises " import that there are premises on the holding which can be described as substantial before this part of the paragraph can begin to operate, and that where the premises are so small and insignificant that they cannot in relation to the entirety of the holding be described as substantial buildings the intention to demolish them does not satisfy the section. Alternatively this sort of case might be brought within the maxim *de minimis non curat lex*.

The " premises " to be demolished will normally be buildings, but it is submitted that they need not necessarily be buildings in the generally accepted sense, otherwise the paragraph would have used that very word. The word " premises " is a wider expression which may be intended to cover any sort of structure or erection capable of being made the subject of demolition or of any of the other operations mentioned in the paragraph. Presumably it must be a fixed structure however and not something on wheels or otherwise removable to qualify as " premises."

As soon as we turn to the next portion of the paragraph a fresh question emerges. The words used are " or reconstruct the premises comprised in the holding or a substantial part of those premises." What is a reconstruction? In *Cadle (Percy E.) & Co.* v. *Jacmarch Properties* (*c*) the argument was put forward that to change the identity and character of the premises as a whole by converting the three separate floors of the premises into one self-contained shop unit was reconstruction of the premises even though the amount of

(*c*) [1957] 1 Q.B. 323. Since this article was written it has been held by the Court of Appeal in *Joel* v. *Swaddle* [1957] 3 All E.R. 325 (a case where the county court judge had erroneously applied the *Cadle* case to materially different facts) that the removal of a side wall and its replacement by steel joists resting on pillars for the support of the upper floors, the purpose being to change the identity of the holding by merging it into adjacent premises, was a reconstruction of a substantial part of the premises.

physical building work involved was relatively small. This contention was rejected by the Court of Appeal, which held that the word "reconstruct" as used in paragraph (f) means "rebuild." There must be in effect a rebuilding of the premises or of a substantial part of them.

The next portion of paragraph (f) deals not with demolition or reconstruction but with new construction whether on the whole holding (as where the landlord intends to build on a vacant site or demolish first and then build something entirely new) or on part (as where additions are to be built on to an existing building). In either case the work of construction is required to be substantial, the meaning of which has been considered above.

Whatever the character of the building work to be done, it is a sufficient intention on the part of the landlord if he intends to cause it to be done by a servant or agent or building lessee or other contractor, but the landlord must of course have control of the work to be done (*Gilmour Caterers* v. *St. Bartholomew's Hospital* (*d*); see also *Cafeteria* (*Keighley*) v. *Harrison* (*e*)).

The final requirement of paragraph (f) is that, whichever of the specified things the landlord intends to do, it must be something that he could not reasonably do without obtaining possession of the holding. It would appear, as a matter of the grammatical construction of the paragraph, that this requirement attaches to each of the alternatives specified in the paragraph and not merely to the last one. It goes without saying that the demolition of either the whole or a substantial part of the premises comprised in the holding necessitates possession being obtained of the holding. In the case of a reconstruction or work of new construction it is a question of fact the answer to which may well vary from one case to another. Particularly in the case of building an addition to the premises the question may be raised whether it could not be done without obtaining possession of the holding from the tenant.

The landlord's precise intention need not be foreshadowed by his notice under section 25 or notice of opposition under section 26 (6). Alternatives may be expressed (*Austin Reed* v. *Royal Insurance Company* (*f*)) and it is sufficient to set forth any statement of ground which makes it clear that paragraph (f) is going to be relied on (*Biles* v. *Caesar* (*g*)). Indeed, the fact of having alternative schemes in mind between which the choice has not finally been made even at the date when a firm intention has to be proved is not inconsistent with there being a firm intention to demolish or

(*d*) [1956] 1 Q.B. 387.
(*e*) (1956) 168 E.G. 668.
(*f*) [1956] 1 W.L.R. 1339.
(*g*) [1957] 1 W.L.R. 156.

reconstruct provided it is clear that the landlord intends so to do according to one or other of the plans under consideration (*Austin Reed's* case).

(2) Reconstruction for Purposes of Landlord's Own Business

It was held in *Fisher* v. *Taylors Furnishing Stores* (*h*) that the fact that the landlord intends to occupy the premises himself after he has demolished and rebuilt them does not debar him from relying upon paragraph (f). It is not a question of which is the primary purpose, as was suggested by the judgments given in *Atkinson* v. *Bettinson* (*i*). The landlord, it was held in *Fisher's* case, can still rely upon paragraph (f) even though he intends to occupy the rebuilt premises himself and even though he is prevented from relying on that part of his intention as a ground under paragraph (g) by the five years' qualification introduced by section 30 (2). In that case, however, it may be material to observe that the premises were very old and very near the end of their useful life in any event, so that the intended demolition and rebuilding could hardly be said to be solely and exclusively related to the purpose of producing premises suitable for the landlord's own occupation. Again, in *Town Tailors* v. *Peacocks Stores* (*k*), cited by Danckwerts J. in *Betty's Cafés* v. *Phillips Furnishing Stores* (*l*), the same court that decided *Fisher's* case allowed the landlord's appeal under somewhat comparable circumstances save that there the buildings, again very old, did not need to be entirely demolished but cried aloud (it was said) for reconstruction, and that was what the landlord intended to do and then use the reconstructed premises for his own business. In *Fleet Electrics* v. *Jacey Investments* (*m*) the proposal was to convert four adjacent shops into one large store for occupation by an associated company of the landlords; there was no suggestion (at any rate no mention thereof in the report of the case) that the premises were so old as to call for reconstruction on that account, but it appears that something new and better in the shape of one large store was to be produced by the proposed works. The landlords failed to establish that firm and settled intention which it has been held a landlord must have for the purpose of paragraph (f) (see below), and accordingly were not successful in their opposition to the tenants' application. It appears, however, that, had they established satisfactorily the requisite fixity of intention, their proposal that the reconstructed premises should be occupied by their

(*h*) [1956] 2 Q.B. 78.
(*i*) [1955] 1 W.L.R. 1127.
(*k*) (1956) 167 E.G. 292.
(*l*) [1956] 1 W.L.R. 678, at p. 686.
(*m*) [1956] 1 W.L.R. 1027.

associated company would not in any way have militated against their right to rely on paragraph (f).

In all these cases an object can be seen in the proposed reconstruction apart from the landlord's desire to occupy for his own business. In the two cases where the landlord succeeded in his opposition an improvement desirable for its own sake was intended as well as the personal advantage to the landlord of then himself occupying the new or improved premises. In the *Fleet Electrics* case it does not appear from the report that to convert four shops into one in the situation of the premises in question was itself and for its own sake a desirable improvement, but it may have been. In *Betty's Cafés* v. *Phillips Furnishing Stores* (*n*) the reconstruction, though substantial, was solely for the purposes of adapting the premises so as to be suitable for the landlord's business, the requirements of a furnishing store being in that respect vastly different from those of a café, and it was frankly admitted that unless possession was obtained for the purposes of the landlord's own business there was no intention whatever of carrying out the reconstruction. Indeed, there would have been not the slightest point in doing it. It was argued for the tenant that an intention which is thus conditional upon the landlord having possession for the purposes of his own business is not such an intention as falls within paragraph (f), and *Cunliffe* v. *Goodman* (*o*) was cited in support. Danckwerts J. was clearly sympathetic towards this argument (see p. 688), but did not need to decide it in view of the decision he had come to as to the relevant date for formation of intention (see below). In the Court of Appeal the judgment of Danckwerts J. was sought to be supported on this as an alternative ground, but in the course of the argument the court intimated that they regarded this as an attempt to reopen the matter decided in *Fisher's* case by putting the argument of primary purpose under another guise, and this argument was not in fact dealt with in their judgments unless the statement made by Romer L.J. at p. 96, with reference to Danckwerts J.'s doubt whether an intention conditional upon the tenant's application being defeated and possession being obtained forthwith by the landlords is within paragraph (f), that he did not himself share the doubt expressed by the judge, inasmuch as no demolitions and few reconstructions could ever be carried out by landlords unless they obtained possession of the premises concerned, may be thought to refer thereto. If it does, the point of the argument, that the intention is conditional upon the landlord having possession *for his own business* seems rather to have been missed.

(*n*) [1956] 1 W.L.R. 678 (Danckwerts J.); [1957] Ch. 67 (C.A.).
(*o*) [1950] 2 K.B. 237.

Since *Betty's* case is under appeal to the House of Lords some further clarification of this question may yet be obtained.

(3) Formation and Proof of Intention

Intention means something more than contemplation. It connotes a state of affairs which a person decides, so far as in him lies, to bring about, and which, in point of possibility, he has a reasonable prospect of being able to bring about, by his own act of volition: *per* Asquith L.J. in *Cunliffe* v. *Goodman* (*p*), in one out of the many passages in the judgments in that case which, though decided under another provision in a different Act of Parliament which does not even use the word "intend" or "intention," has proved a perfect mine of dicta on the connotation of the word "intend." These dicta culled from *Cunliffe* v. *Goodman* have been extensively quoted in and applied to cases under the paragraphs of section 30 (1) of the 1954 Act involving intention. See for example *Fisher's* case, where Parker L.J. quotes (at p. 92) Asquith L.J.'s picturesque words, "moved out of the zone of contemplation—the sphere of the tentative, the provisional and the exploratory—and had moved into the valley of decision." In *Betty's* case Romer L.J. quoted at some length from Asquith L.J.'s judgment. In *Reohorn* v. *Barry Corporation* (*q*) Denning, Birkett and Parker L.JJ. all quoted extensively from *Cunliffe* v. *Goodman* and in the *Fleet Electrics* case Lord Evershed M.R. said (*r*) that the Court of Appeal has now made it clear that the test for "intention" within the meaning of section 30 (1) (f) is to be found in the language taken from Asquith L.J.'s judgment in *Cunliffe* v. *Goodman* quoted in the cases mentioned above.

What this all amounts to is that for the purposes of paragraph (f) (and, of course, of (g) also) the landlord must have formed an intention which is firm and settled, not likely to be changed, it must not be merely contemplative or provisional, and it must relate to something which he has a reasonable prospect of being able to carry out. The loose statement of the last-mentioned requirement has led, it is thought, to some misunderstanding. A man may have a reasonable prospect of being able to carry something out without having obtained every planning and other consent which will ultimately be required, and without having obtained precise estimates or even had the final detailed plans and specifications drawn up for the work. On the other hand there are cases where there are obstacles so apparent and formidable that a person cannot

(*p*) [1950] 2 K.B. 237, at p. 253.
(*q*) [1956] 1 W.L.R. 845.
(*r*) At p. 1033.

be said to have a reasonable prospect of being able to carry out the work until he has surmounted those obstacles. Such was the position in *Reohorn's* case, where there were all sorts of difficulties to be overcome before an ambitious scheme, estimated to cost half-a-million pounds, could be put into operation, and no doubt where any serious planning or other difficulty in the way of implementing the landlord's proposals is apparent on the face of the scheme the landlord must at least have reached the position where he has a reasonable prospect of surmounting those difficulties before he can be said to "intend" within paragraph (f).

Some of the language used, however, in relation to the landlord's reasonable prospect of being able to carry out the work has been expressed somewhat loosely. Thus in *Reohorn's* case Denning L.J. said, "Intention connotes an ability to carry it into effect," and Birkett L.J. said the same thing: "Intention (as used in the Landlord and Tenant Act, 1954, s. 30 (1) (f)) to do something must include the ability to do the thing intended." This, of course, is going much further than anything Asquith L.J. ever said. He merely pointed out that there are cases where there is such a formidable succession of fences to be surmounted before the desired result can be achieved that it is unmeaning to say that "X" intends that result, and that he must have a reasonable prospect of being able to carry it out. Parker L.J. in *Reohorn's* case expressed much more accurately what Asquith L.J. had said, and quoted the very words "reasonable prospect." It is submitted that a reasonable prospect is all that has to be shown. In *Betty's* case Lord Evershed M.R., in a passage in his judgment which was not limited to the issue of date whereon he dissented from the majority of the court, said, "In my judgment, the adoption of Asquith L.J.'s language by this court in the later cases cannot be treated as having (in effect) substituted for the word 'intends' in paragraph (f) (as in paragraph (g)) of the section the words 'is ready and able,' so as to impose upon the landlord the onus of proving that, at whatever be the proper date, he has not only finally determined upon the course proposed but has also taken all necessary steps for the satisfaction of any requisite conditions to which the course proposed is subject. The relevant word is "intends" . . . . If there are conditions to which the course proposed is subject, but if the landlord has no reason to suppose that there would be any difficulty in their fulfilment, then prima facie, in my view, the landlord would not fail to prove intention within the meaning of the section merely because he could not prove, at the date in question, that all steps had been taken to satisfy the conditions. But it might well be otherwise if the course

proposed were conditional upon other things being done which were by no means matters of course; for example, the successful raising of large sums of money not presently available to him." It is submitted that this passage expresses the principle correctly. In *Mash & Austin* v. *Odhams Press* (*s*) and in *Pelosi* v. *Bourne* (*t*) both before Roxburgh J., an attempt was made, relying upon the passages cited above from the judgments of Denning and Birkett L.JJ. in *Reohorn's* case, to attack the landlord's intention on the ground of no planning permission having as yet been applied for, there being no reasonable ground for apprehending that such permission would not be obtained when applied for. Roxburgh J. rejected the contention, holding that the test was "reasonable prospect" and that that test was satisfied in each of the cases before him.

Whether the landlord has proved the requisite intention is a question of fact (see the reference back to the judge in *Betty's* case, and *Herbert* v. *Blakey (M.) & Co.* (*u*)).

Intention being a state of mind, the issue before the court where the landlord is an individual or group of individuals is to determine the genuineness of the alleged state of mind of that individual or of each of the individuals making up the group. Where the landlord is a body corporate different considerations arise which have been the subject of a number of decisions concerning limited liability company landlords. In the *Fleet Electrics* case, already mentioned on other points, Lord Evershed M.R. said that it is clear that when the landlord is a limited company, "the existence of the intention (and particularly the proof of the quality of the intention, that it is firm and settled) can be established only through the directors or other principal officers of the company." The normal and correct way of forming and expressing an intention is by resolution of the board of directors duly recorded in a minute, and there are cases, such as *Betty's* case, where the course of events makes it clear that no one has authority to bind the board in the particular matter, so the intentions of the board can in such a case only be found in the resolutions of the board as recorded in the minutes. In other cases it may be proved by evidence that the board has by its resolution formed an intention though the resolution has not been recorded in a minute. There is no special sanctity about a minute book, though it is from its nature the normal and proper method of proving the proceedings of the board. In the *Fleet Electrics* case the court examined the acts of the directors and other principal officers of the company subsequent to the one relevant resolution they had passed to see whether

(*s*) (1957) 169 E.G. 655.
(*t*) 169 E.G. 656.
(*u*) (1956) 167 E.G. 65.

an intention having the requisite qualities of firmness and fixity had been formed through the directors or other principal officers of the company, and came to the conclusion that it had not.

In *Bolton (H. L.) (Engineering) Co.* v. *Graham (T. J.) & Sons* (*a*), a case under paragraph (g) but involving this same point as to proof of a company's intention, the landlord company, which held only one board meeting a year, had not held any board meeting or made any other collective decision regarding the intention on which they relied. The landlord company was a subsidiary of a big company and there was a group of associated cement companies. The operative decision was actually taken at a meeting of the managing directors of the various companies of this group. Without any board meeting of the landlord company its directors then went forward with the project as a real project but, although they frequently discussed it and individually went ahead on behalf of the company, there was no meeting formally as a board and no vote was ever taken or minute recorded. The county court judge found that the business of the company had been so conducted and its position was such that matters of this sort, which were business matters, were dealt with by the agents of the company, the people who managed the business. Here, of course, on the particular facts of this case, was a finding of fact diametrically opposite to the findings of the judge of fact in *Betty's* case. The Court of Appeal in *Bolton's* case (Denning, Hodson and Morris, L.JJ.) said that the state of mind of directors and managers of the company who represent the directing mind and will of the company and control what it does is the state of mind of the company and is treated by the law as such. Whether the intention of officers and agents of the company is the company's intention depends on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case. The court held that having regard to the facts of that case the judge was entitled to infer that the intention of the company was to occupy the holding for its own purposes. So *Bolton's* case and *Betty's* case stand side by side illustrating the contrasting classes of case where on the facts the intention of individual officers of the company can or cannot be accepted as the intention of the company.

(4) The Value of an Undertaking as Evidence of Intention

The mere offering of an undertaking to the court does not itself establish that the landlord has an intention of the requisite firmness and fixity. It may however in a particular case supply the

(*a*) [1957] 1 Q.B. 159.

necessary evidence of fixity of purpose without which the court would not otherwise be satisfied as to the alleged intention. This was so in *Betty's Cafés* v. *Phillips Furnishing Stores* (*b*). That, however, is not always the result of offering an undertaking, as is shown by *Lennox* v. *Bell* (*c*). There, although an undertaking was offered, the judge on the evidence before him doubted the ability of the landlord to do what she said she intended, and accordingly came to the conclusion that it was impossible to say that she really had a firm intention to carry on the business, as she alleged. The Court of Appeal (Goddard L.C.J., Romer L.J. and Devlin J.) saw no reason to interfere with the decision of the county court judge. This case also raised a point as to the wording of an undertaking. In *Betty's* case, where a large-scale reconstruction was in question, the undertaking given by a substantial public company was that the works described " will be carried out as soon as is practicable in the event of possession being obtained," and the Court of Appeal in *Lennox* v. *Bell* saw nothing to criticise in the wording of that undertaking viewed in relation to the facts of *Betty's* case. But when the same formula of words was applied to the facts of the greengrocery business in *Lennox* v. *Bell* and the undertaking was set against the background of the facts in that case, in particular the doubt as to whether the landlord could effectively take over the business herself and the certainty that on the evidence she could not do so without the assistance of two other persons, it was seen that the undertaking suffered from a grave vagueness.

(5) The Relevant Date for Possession of the Requisite Intention

After conflicting dicta of Lord Evershed M.R. in the *Fleet Electrics* case and Denning L.J. in *Reohorn's* case, and a decision of Danckwerts J. in *Betty's* case that the landlord must have had the intention on which he relies at the date of the service of his notice to terminate under section 25 or, as the case may be, of his notice of opposition under section 26 (6), the Court of Appeal has by a majority decided in *Betty's* case that the relevant date for the landlord to have the requisite intention is the date of the hearing, and that it is open to the landlord to form that intention at any stage of the hearing down to the time the court divests itself of further jurisdiction by making an order. In *Betty's* case itself the intention was not formed (that is to say, was not formed so as to be the intention of the company) until the case had been proceeding in court a whole week, and was then formed only just in time to be put in as part of the landlord company's case. Since

(*b*) [1957] 1 W.L.R. 799.

(*c*) (1957) 169 E.G. 753.

Betty's case is under appeal to the House of Lords it is not proposed to marshal the arguments for the majority Court of Appeal decision (Birkett and Romer L.JJ.) and for the minority view (expressed by Lord Evershed M.R.). The observation will merely be made that under this decision a landlord can change his mind at the very last moment, even as late as the moment when it becomes, perhaps, apparent that the decision is going to go against him on the intention he has so far held. Clearly the court is placed under a heavy duty to investigate very strictly the fixity and firmness of an intention put forward for the first time at a late stage of the case and there are very likely to be cases where the genuineness of an intention so formed will not be accepted by the court.

(6) Change of Landlord in Relation to Intention

The points which can arise in relation to the paragraph (f) intention are legion, and it is clearly impossible to anticipate all of them in an article of this scope. An effort has been made, above, to discuss the more important points which have already been before the courts in reported cases and to consider the implications of some of the decisions. Before concluding, it is proposed to notice just one other point which arises from time to time and requires some consideration. That is the situation which arises after a first step under the Act has been taken either by the landlord or the tenant and there is then a change of landlord (as defined for the purposes of the Act). It is clear from the decision in *X.L. Fisheries* v. *Leeds Corporation* (*d*) that the Act does not require, as a condition of opposition to a new tenancy application, that the landlord (as defined) shall be the same person throughout. On the other hand it is requisite that whoever is for the time being the landlord for the purposes of the Act shall be before the court: *Piper* v. *Muggleton* (*e*). If there is a change of landlord after the tenant has made a request for a new tenancy but before any notice in answer has been served under section 26 (6) the new landlord, provided he comes in in time to do it within the prescribed period of two months from service of the tenant's request, can serve his notice of intention to oppose alleging his own grounds: *X.L. Fisheries* case. Once however the landlord for the time being has put in a notice in answer, it appears that a subsequent landlord is bound by it and cannot amend the grounds: that view is clearly stated by Parker L.J. in the *X.L. Fisheries* case, at p. 640. He can, however, adopt the grounds set forth in his predecessor's notice and show that he has

(*d*) [1955] 2 Q.B. 636.
(*e*) [1956] 2 Q.B. 569.

the requisite intention in relation to the date relevant for the purpose. And in the case of the termination of a tenancy by a landlord's notice under section 25 it is clear that the grounds specified by the landlord serving the notice (or his statement that he will not oppose an application for a new tenancy) will bind his successors and they must fit any opposition they desire to make to an application for a new tenancy into the contents of their predecessor's notice.

(*Concluded*)

PRIVATE STREET WORKS

By Harold Parrish, Barrister-at-Law.

There are various statutory provisions for making up streets at the expense of the frontagers and some of the codes apply to highways already repairable by the inhabitants at large, for example, the code applicable to the metropolis as provided by the Metropolis Management Act, 1855, and codes in local Acts by virtue of the incorporation of the Towns Improvement Clauses Act, 1847, s. 53, or by virtue of their own special provisions.

Application of the Public Health Act, 1875, and the Private Street Works Act, 1892

There are, however, two statutory codes of general application which specifically exclude any power to make up at the expense of the frontagers highways repairable by the inhabitants at large but otherwise apply to any street as so defined (*a*). These are the code in the Public Health Act, 1875, ss. 150–152 (as amended and supplemented by the Public Health Act, 1890, ss. 11 (2), 41, and the Public Health Act, 1925, ss. 81, 82), and the code in the Private Street Works Act, 1892. The Public Health Act code applies in all urban districts unless the Private Street Works Act, 1892, is adopted. On such adoption the Act of 1892 applies exclusively in the district in which it is adopted. The Act of 1892 also applies exclusively in rural districts without the necessity for adoption. These two codes are also applied, subject to exceptions, adaptations and modifications, to land defined by a development plan as the site of a proposed road or as land required for the widening of an existing road of less than by-law width and designated in the plan as land to which the Town and Country Planning Act, 1947, s. 48, applies. The codes do not so apply until the local authority by order declares the land together with the existing road, if any, to be a private street, and it is then deemed to be a highway and a private street.

(*a*) That is, " any highway and any public bridge (not being a county bridge), and any road, lane, footway, square, court, alley or passage whether a thoroughfare or not ": Public Health Act, 1875, s. 4; Private Street Works Act, 1892, s. 5. This definition has been held to extend to a street in all respects private; see *Taylor* v. *Oldham* (1876) 4 Ch.D. 395, *per* Jessel M.R.; *Robinson* v. *Barton-Eccles Local Board* (1882) 21 Ch.D. 621.

Principal Differences Between the Two Codes

It is not proposed in this article to set out in detail the procedure under the various codes, since space will not permit such treatment; but an attempt will be made to draw attention to the more important rights of the frontagers and duties of the local authority at various stages in the application of the codes, and most particularly in relation to the Act of 1892.

In the first place, a local authority has under the Act of 1892 an advantage over the users of the Public Health Act code, inasmuch as objections to the street as a street, to the works and to the apportionment of the expenses may all be taken and heard before the works are carried out, while under the Public Health Act code, where the local authority executes the works in default of the frontagers, the apportionment of the expenses may only be disputed after the works are done, and the other objections only when it is sought to recover the expenses. The authority, accordingly, have no certainty that they will be entitled to recover the expenses until they have incurred them. Furthermore, under the Public Health Act code the apportionment is limited to the basis of frontage, whereas, under the Act of 1892, the authority may resolve to have regard also to the degree of benefit derived and the amount and value of any work already done by the frontagers; and they may also include premises which do not front, adjoin or abut on the street but have access thereto. Under the Act of 1892 the authority may also charge upon the frontagers 5 per cent. additional upon the actual cost to cover the cost of the preparation of plans, supervision and notices and may recover the expenses by action as well as summarily before the justices. There are other differences which will be referred to later.

Street Widening

In applying the various codes the local authority may only make up the street as they find it (*b*). If they want a wider road they must purchase or induce the owner to dedicate the additional land. Even where the additional land has been defined and designated in a development plan as land for widening under Town and Country Planning Act, 1947, the order declaring that land, together with the existing road, to be a private street may not be made unless the authority have acquired the land at the date of the order or have the consent of the persons interested.

An authority may, however, require under Public Health Act, 1925, s. 35, a variation of the existing widths of the carriageway

(*b*) *Robertson* v. *Bristol Corporation* [1900] 2 Q.B. 198.

and footway of a street when making it up; but the expenses of the street works chargeable to the frontagers are then limited to the expense of a carriageway and footway of such widths as could have been imposed for a street of the same class by any by-law or enactment in force at the time the street was laid out. The authority also has powers under section 9 of the Act of 1892 to alter the level of the street and do other things to bring the street into conformity with other streets.

Making Up in Stages

It is not always reasonable or convenient for the authority to make up the whole of the street and they may make up one or both of the footways before making up the carriageway; or they may light the street or sewer the street before making up any of the footways or carriageways. Where footways are so made up they should not be adopted or the authority will find themselves under the Act of 1892 liable for the making up of the carriageway. On the making up of the remainder of the street the authority may, if the footways are in an unsatisfactory state, charge the frontagers again for their repair and, in fact, may do all or any of the works from time to time at the expense of the frontagers (*c*) except sewering; sewering is excepted for reasons which appear later.

Contribution and Apportionment

The authority may, under section 15 of the Act of 1892 and under section 81 of the Public Health Act, 1925, when operating the Public Health Act code, make a contribution to the expenses of the works but not to the expenses of any particular frontager. Contributions will not ordinarily be made merely because of the high cost of making up, otherwise the authority will be expected to make a contribution to every street. In special circumstances, however, a contribution may remove objections to the proposals where the making up is required primarily in the interests of the authority, and would be premature so far as the interests of the frontagers are concerned.

Under section 6 of the Act of 1892 the local authority must first resolve to make up the street or part thereof, and the surveyor must then prepare a specification of the works with an estimate of the probable expenses, and provisionally apportion the estimated expenses among the premises liable to be charged in the form prescribed. These premises are the premises fronting, adjoining or abutting on the street, or against those having access thereto if a

(*c*) *Barry and Cadoxton Local Board* v. *Parry* [1895] 2 Q.B. 110.

resolution to that effect is made under section 10. The apportionment must be on the basis of frontage but a resolution to have regard also to benefit derived may be made under section 10 of the Act. The estimated expenses may also be reduced in proportion to frontage by a resolution of the authority to contribute to the expenses under section 15 of the Act. The specification, estimates and apportionment must then be approved by a resolution of the authority, and that resolution must be published and notice served on the owners of premises shown on the apportionment as liable to be charged. Such service is a condition precedent to recovery of the expenses (*d*), and if the authority have not complied with the Act, they should withdraw the first publication and start again, or rescind the resolution approving the apportionment and pass a new resolution of approval.

Failure to serve a proper notice on the owners of premises frequently arises because of the difficulty of finding out who are the owners; but this difficulty can be avoided because the Public Health Act, 1875, s. 267, which prescribes various methods of service, gives power to address the notice to the owner without naming him or fix the notice on the land.

Objections

During the period of one month from the date of first publication of the resolution approving the apportionment the owner of the premises may object on any of the various grounds specified in section 7 of the Act of 1892.

Street repairable by inhabitants at large

Of the various objections which may be made by the frontagers, the most profitable to the frontager is the objection that the street or part of the street is a highway repairable by the inhabitants at large and, although the objection is made by the frontager, he has the comforting knowledge that the onus of proof that the street is not so repairable is on the local authority (*e*). In a simple case the authority may give evidence that the highway is not shown as a highway on any map made before the Highway Act, 1835, and that they have never repaired the street, and that it does not appear on their list of streets under the Public Health Act, 1925, s. 84, as repairable by them. This evidence may be countered by an ordnance map made before 1835 or soon after (*f*), or by a tithe

(*d*) *Maguire* v. *Leigh Urban District Council* (1906) 70 J.P. 479.
(*e*) *Huyton-with-Roby Urban District Council* v. *Hunter* [1955] 1 W.L.R. 603, C.A.
(*f*) *Att.-Gen.* v. *Antrobus* [1905] 2 Ch. 188; *Att.-Gen.* v. *Stokesley Rural District Council* (1928) 26 L.G.R. 440; *Att.-Gen.* (*Aethwy Rural District Council*) v. *Meyrick* (*Sir George*) (1915) 79 J.P. 515.

map (*g*) showing the street to have been in existence at that date, with, *inter alia*, evidence of the existence of an old milestone or direction stone on the road; and from the maps there may be an inference that the road was not private by reason of its linking two highways, or as being of more use to the public than to adjoining owners of the land. It may also be countered by evidence that the street was constructed under an agreement under the Public Health Act, 1875, s. 146, or that the highway authority was relieved by an order of the justices from the necessity of repairing the street under the Highway Act, 1864, s. 21, or the Highways and Locomotives (Amendment) Act, 1878, s. 24, on the ground that the street at the time was so little used as to make repair unnecessary, or that, without such an order, the street has not been repaired because repair was unnecessary. Furthermore, the street, although coming into existence after the Highway Act, 1835, may have been created as the result of a diversion order under the Highway Act, 1835, and is repairable to the like extent as the old diverted highway.

It is sufficient for the relief of the frontagers if the whole width of the street is repairable by the inhabitants as a footpath or bridleway; but in such a case the local authority may decline to put the private street works code into operation and, as their common law duty to repair a highway in accordance with the development of traffic is limited to their obligation to repair as restricted by the Highway Act, 1835, s. 23, the frontagers, if they are anxious to have the street made up for carriages, may be compelled to enter into an agreement to have the street made up under the Public Health Act, 1875, s. 146.

Where, however, part only of the street is repairable as a public footpath or bridleway, the position becomes even more complicated. Under the Private Street Works Act, 1892, the part of the street other than the public footpath must be made up as a separate street or, if the public footpath divides the street, as two separate streets, since the Act only applies to a street not repairable by the inhabitants at large (*h*). The public footpath then forms the frontage of one side of the street or streets, as the case may be, and being *extra commercium* the local authority must bear the expense of that frontage or those frontages. It is, however, sometimes contended that premises front, adjoin or abut onto a street although there is an intervening public footpath; but this contention implies that premises can have the same frontage to two streets. On the other hand, under the Public Health Act, 1875,

(*g*) *Att.-Gen.* v. *Antrobus* [1905] 2 Ch. 188; *Att.-Gen.* v. *Stokesley Rural District Council* (1928) 26 L.G.R. 440.

(*h*) *Cf. Property Exchange, Ltd.* v. *Wandsworth Board of Works* [1902] 2 K.B. 61, C.A.

s. 150, there is power to require the making up of a street and do the work in default, even if a public footpath is part of the street or some part is repairable by the inhabitants at large. The local authority may therefore exercise their powers in relation to the part of the street which is not repairable by the inhabitants at large as if the whole street were not so repairable, and is not required to treat the part to be made up as if it were a separate street. But this does not enable the authority to make up at the expense of the frontagers the part repairable by the authority (*i*) unless, in special circumstances, the whole street amounts to a completely new street (*k*). The above difficulties may also arise where a highway repairable by the inhabitants at large has become a new street for the purposes of the by-laws as to new streets under the Public Health Act, 1875, s. 157, or has been declared to be so under the Public Health Act, 1925, s. 30. In such cases the owner of the premises, when developing, may comply with the by-laws and dedicate the land as part of the highway, or he may possibly not dedicate the land; even if he does, the land may be in such a position that the public have no immediate use for it and do not accept it, and the frontager may re-enclose it (*l*). The by-laws apply to the laying out of streets generally, and there is no obligation under the by-laws to dedicate land as a highway. A continuous development alongside a highway repairable by the inhabitants at large may even lead to the creation of a public footpath behind the boundary of the highway and separate therefrom. If this occurred before December 16, 1949, the date of the passing of the National Parks and Access to the Countryside Act, 1949, the footpath will be repairable by the inhabitants at large (*m*); but if dedicated after that date it is, by virtue of section 49 of that Act, not so repairable, and will be subject to the private street works codes.

Sewering

A local authority may require the street to be sewered to their satisfaction and, if the street is sufficiently sewered, the authority cannot require the street to be sewered again on the ground that the sewers are out of repair or defective. The reason for this is that before the Public Health Act, 1936, a sewer constructed to the satisfaction of the local authority vested in them with a

(*i*) *Cf. ibid.* at p. 70, and see *Maude* v. *Baildon Local Board* (1883) 48 L.T. 874, *per* Pollock B.

(*k*) *Evans* v. *Newport Urban Sanitary Authority* (1889) 24 Q.B.D. 264.

(*l*) *Tarrant* v. *Woking Urban District Council* [1914] 3 K.B. 796; *Kirby* v. *Paignton Urban District Council* [1913] 1 Ch. 337.

(*m*) *Robinson* v. *Richmond (Surrey) Borough Council* [1955] 1 Q.B. 401.

liability to repair and they could not complain of its defective state. This meant, however, no more than that the authority were satisfied with the sewer as a sewer, and did not necessarily mean that they were satisfied with it as a sufficient sewering of the street (*n*). So a public sewer which can only serve one side of a street is not sufficient for the street as such, and the existence of a foul sewer for the whole street is not sufficient sewering where a surface water sewer is also required; nor is a sewering of half the length of a street sufficient for the whole length. Surface water gullies and the pipes connecting them to the underground sewer vested as part of the sewer, but gullies or channels for a mere surface system of drainage would not, it seems, have so vested, as they would be no more than part of the formation of the road (*o*).

Since the Public Health Act, 1936, sewers constructed by private persons for a street do not vest in the local authority unless they are adopted under section 17 of that Act; or, by virtue of section 20 of that Act, have been constructed by such persons after notice under the Public Health Act, 1875, s. 150, or a similar code in a local Act; or have been constructed by the local authority under such a code or under the Private Street Works Act, 1892.

Objection for unreasonableness

What is a sewering of the street to the satisfaction of the local authority is a question of fact and a question for the authority; but any works of sewering can be objected to on the ground that they are unreasonable. So where both sides of a street have a foul sewer at the back of the houses, it is unreasonable to require any more than a surface water sewer in the street (*p*).

An objection on the ground of unreasonableness may be made in respect of any of the works, and may be made on the ground that the proposal to do the works is premature, or may take the form of objection to the materials used (*q*). It would be difficult, however, to sustain an objection where the proposed works are in accordance with generally accepted standards of those required by the Minister of Housing and Local Government for the type of road. On the other hand, obsolete methods of construction causing the estimated expenses to be excessive may be attacked when objecting to the estimated expenses.

(*n*) *Sheffield Corporation* v. *Anderson* (1894) 64 L.J.M.C. 44; *Poole Corporation* v. *Blake* [1956] 1 Q.B. 206.

(*o*) *Re Jesty's Avenue, Broadway, Weymouth* [1940] 2 K.B. 65; *Poole Corporation* v. *Blake* [1956] 1 Q.B. 206; *East Barnet Urban District Council* v. *Stacey* [1939] 2 All E.R. 621; *Wandsworth Borough Council* v. *Golds* [1911] 1 K.B. 60, at p. 67.

(*p*) *Sheffield Corporation* v. *Anderson* (1894) 64 L.J.M.C. 44.

(*q*) *Mansfield Corporation* v. *Butterworth* [1898] 2 Q.B. 274 (C.A.), at p. 281; *Southgate Corporation* v. *Park Estates (Southgate), Ltd.* [1954] 1 Q.B. 359.

An objection as to unreasonableness may only be made as to the unreasonableness of the works, and an objection that it is unreasonable to charge the frontagers with the expenses of the works is not admissible (*r*).

Other objections

All premises must be included in the apportionment even if they are exempt (*s*), but, if exempt premises are shown in the apportionment as having owners liable for the expenses, the apportionment is incorrect in respect of some matter of fact within section 7 (f) of the Act of 1892, and if the owners do not object within the time provided they will be bound by the apportionment and be liable for the expenses apportioned against the premises (*t*).

No objection may be made that the local authority have made no contribution under section 15 of the Act of 1892 towards the expenses, or that they have failed to exercise their power under section 10 to resolve to have regard to the degree of benefit to be derived, or the amount or value of work done by the owner or occupier of any premises, or to include premises which do not front, abut or adjoin the street but have access thereto. These objections are, however, frequently made and it is not unusual for the justices to adjourn in order to give the local authority further opportunity to make such resolutions but, if they refuse, the justices may not quash the apportionment on that ground, nor so amend the apportionment as to make directly or indirectly a resolution for the authority (*u*). On the other hand, if a resolution to have regard to benefit derived or work done is passed, objection may be made as to the amounts apportioned under those resolutions, and if premises having access only are included and the access is over a highway or over a street or way intended to be a highway (*a*), the owners should object or they will be bound by the apportionment. Furthermore, if a contribution is made by the authority under section 15 and the apportionment is not reduced in proportion to frontage there will be an error in a "matter of fact" within section 7 (f).

(*r*) *Chatham Corporation* v. *Wright and Le Messurier* (1929) 94 J.P. 43, at p. 45; *Allen* v. *Hornchurch Urban District Council* [1938] 2 K.B. 654, at pp. 670, 671.

(*s*) *Herne Bay Urban Council* v. *Payne and Wood* [1907] 2 K.B. 130.

(*t*) *Watford Corporation* v. *London Passenger Transport Board* [1945] K.B. 129; *Brighton Borough Council* v. *Peachy (Investments)* [1957] J.P.L. 585.

(*u*) *Bridgwater Corporation* v. *Stone* (1908) 72 J.P. 487.

(*a*) *Newquay Urban District Council* v. *Rickeard* [1911] 2 K.B. 846.

Final Apportionment

When the street works have been completed the surveyor must, under section 12 of the Act of 1892, make a final apportionment by dividing the expenses in the same proportions in which the estimated expenses were divided in the original or amended provisional apportionment. Notice of the final apportionment must then be served upon the owners of the premises affected and service of the notice is a condition precedent to recovery of the expenses (*b*). If the premises affected have been sold wholly or in part since the settlement of the provisional apportionment, the notice should be served on the new owner and, where a substantial sum is involved, it is advisable to address a notice to the owner without naming him and also fix a notice on the land. The owner of any premises charged with the expenses may object within one month after service of the notice, and objections are determined in the same manner as objections to the provisional apportionment.

Enforcement of Liability

Any premises included in the final apportionment, and all estates and interests therein, stand and remain charged under section 13 of the Act of 1892 or under section 257 of the Public Health Act, 1875, with the sum finally apportioned on them with interest, and the authority has the remedies of a mortgagee under the Law of Property Act, 1925. The charge operates as from the completion of the works but interest on the amount of the charge runs only from the date of the final apportionment (*c*). No dealings with the land since the completion of the works can therefore affect the liability of the premises as a whole to the charge (*d*). Time runs from the completion of the works since there is a present right to receive the expenses (*e*) under section 18 of the Limitation Act, 1939, and, where the right to recover the expenses is postponed until land which is agricultural land ceases to be so, or until access is provided for and used by persons or vehicles from the land to the street under the Town and Country Planning Act, 1947, s. 48, or under a local Act, time may run against the charge before the condition is fulfilled.

The authority may, however, recover the expenses under section 14 of the Act of 1892 in a court of summary jurisdiction, or

(*b*) *Wirral Rural District Council* v. *Carter* [1903] 1 K.B. 646; *Maguire* v. *Leigh-on-Sea Urban District Council* (1906) 70 J.P. 479.
(*c*) *Stock* v. *Meakin* [1900] 1 Ch. 683.
(*d*) *Birmingham Corporation* v. *Baker* (1881) 17 Ch.D. 782; *Bristol Corporation* v. *Virgin* [1928] 2 K.B. 622.
(*e*) *Hornsey Local Board* v. *Monarch Building Society* (1889) 24 Q.B.D. 1; *Poole Corporation* v. *Moody* [1945] K.B. 350.

by action from the owner for the time being of any premises in respect of which any sum is due for expenses, and this is so in respect of successive owners and after the time for enforcement of the charge has expired (*f*). Time runs from the date of demand on each owner.

Under the Public Health Act code the charge has a similar operative effect, except that the leave of the court is necessary to enforce the charge unless it has been registered under the Land Charges Act, 1925, s. 15, when it takes effect by virtue of section 11 of that Act as if it had been created by a deed of charge by way of legal mortgage. In any case, under both codes the charge should be registered as a local land charge, otherwise it will be void as against a purchaser for money or moneys worth. This will not, however, prevent proceedings for recovery summarily or by action under the Act of 1892 from the original owner or a subsequent owner (*f*).

Adoption of Street

Wherever all the works are completed the authority may under the Public Health Act code adopt the street as a highway repairable by the inhabitants at large under section 152 of the Public Health Act, 1875, subject to objection by the frontagers or, if the authority have adopted Part III of the Public Health Acts Amendment Act, 1890, they may under section 41 of that Act so adopt the street whenever all or any of the works have been executed by the authority subject to objection by the frontagers. Where, also, notices requiring the carrying out of works have been served under the Public Health Act code and the street is sewered, levelled, paved, flagged, metalled, channelled and made good to the satisfaction of the authority, the authority may be compelled to adopt the street under section 82 of the Public Health Act, 1925, although the street is not lighted. There is no provision in the above Acts, except the Public Health Act, 1875, s. 152, for adoption of a street made up by a developer where no notices have been served under section 150 of the Public Health Act, 1875, but adoption in such a case may be effected by an agreement under section 146 of that Act, and there is now power under section 2 of the New Streets Act, 1951 (Amendment) Act, 1957, for a local authority to adopt a street where the work of making it up was not done at the expense of the authority.

Under the Act of 1892 the authority may, under section 19 of that Act, adopt the street whenever all or any of the street works have been executed and the frontagers have no right to object. This power applies whether the works have been carried out under

(*f*) *Dennerley* v. *Prestwick Urban District Council* [1930] 1 K.B. 334 (C.A.).

the procedure of the Act or not, but in the case of a street which is not a highway, the frontagers may claim compensation under section 308 of the Public Health Act, 1875. The frontagers also have power under section 20 of the Act of 1892 to require the adoption of the street when all the works are executed to the satisfaction of the authority, although the street is not lighted. The authority may, however, require the street to be lighted, provided they can exercise that power before the operation of the power of the frontagers to require adoption.

THE RENT ACT, 1957—(3)

By Donald Keating, b.a., and Christopher Friday, b.a., Barristers-at-Law

Adjustment of Rent Limit

In the second article (*a*) of this series the authors showed how to calculate the rent limit and how a landlord can increase the rent recoverable under the Rent Acts up to that limit. Unlike standard rent which remained constant, the rent limit varies according to the amount of rates payable by the landlord and the furniture and services respectively used by and provided for the tenant. It may be increased on account of improvements and it may be reduced for disrepair. These changes in the rent limit, apart from reduction for disrepair, are the subject of this article.

But it should be noted that while the tenancy in question remains contractual no notice of increase or increase of rent on account of services or furniture can take effect, unless the terms of the contractual tenancy so provide (*b*). The effect of a notice of increase as a notice to quit has already been discussed (*c*).

1. Adjustments in respect of rates

One of the factors to be taken into account in the calculation of the rent limit is the annual amount of any rates for the basic rental period (*d*) payable by the landlord or a superior landlord. If subsequently the amount of such rates differs from the amount payable for the basic rental period, the rent limit is increased or decreased by the difference (*e*). The method of calculating the amount of rates payable for a rental period has already been considered (*f*).

The landlord may recover any increase in respect of rates by the service of a notice of increase in the prescribed form, Form B (*g*).

(*a*) *Ante*, p. 329.
(*b*) s. 6 (2).
(*c*) *Ante*, p. 338.
(*d*) *i.e.*, normally the rental period comprising July 6, 1957: s. 25 (1). Where a controlled tenancy begins after July 6, 1957, the basic rental period is the first rental period of the tenancy.
(*e*) s. 3 (1).
(*f*) *Ante*, p. 334.
(*g*) s. 3 (2). The form is contained in the Rent Restrictions Regulations, 1957, Sched. I.

In so far as a notice of increase relates to an increase on account of rates paid by the landlord it can take effect retrospectively (*h*). Thus the date specified in the notice for the increase to take effect can be any date not earlier than six weeks before the service of the notice (*i*). Where the landlord takes advantage of this right of retrospective increase, the rent underpaid by the tenant for the period between the date specified in the notice for the increase to take effect and the date of service becomes due on the day after the service of the notice (*i*). An increase on this ground is not affected by the two-stage process required in certain instances in respect of the initial increase (*k*). The whole increase becomes payable at once (*l*).

The Act deals with the position which arises from the normal practice of local authorities in issuing the first demand for rates after the commencement of the rating period. Initially the rates for the rental periods preceding the making of the demand are to be calculated upon the basis that the rates for the new rating period are to be the same as the rates for the previous rating period (*m*). If, when the first demand is made, the rates are increased, the amount of rates for the rental periods comprised in the new rating period must be recalculated on the basis of the information given in the demand and any previous demands (*n*) and the rent limit adjusted accordingly. Such recalculation cannot affect the ascertainment of rates for any rental period beginning six weeks before the date of the service of the demand which necessitates the recalculation (*o*). The landlord must therefore act promptly after the receipt of the first demand otherwise he may not be able to pass on to the tenant the whole of the increase of rates permitted by the Act.

Nothing in the Act expressly imposes a duty on the landlord to inform the tenant of a decrease in the rent limit which follows a decrease in the amount of the rates payable by him. But the regulations provide that among the matters which must be stated in the notice inserted in the rent book is the amount of rates borne by the landlord (*p*), and a footnote states that this entry must be kept up to date (*q*). Where the tenant discovers in this way or by some other means, such as inquiry from the local authority, that the rent that he has paid is in excess of the rent limit, he may call upon the

(*h*) *Cf.* the general position as to date of increase, *ante*, p. 338.
(*i*) s. 3 (2).
(*k*) *Cf.* s. 2 (2) (b).
(*l*) s. 3 (3).
(*m*) Sched. 2, para. 2.
(*n*) Sched. 2, para. 3 (1).
(*o*) Sched. 2, para. 3 (2).
(*p*) See Form D in the Regulations, Sched. 2.
(*q*) See note to Form D.

landlord to make repayment and in default of such repayment withhold rent until the excess is discharged (*r*), or he can sue for its recovery (*s*).

2. Adjustment as respects services and furniture

Where appropriate, the rent limit includes the annual reasonable charge for services actually provided by the landlord during the basic rental period and for furniture the tenant is entitled to use under the contract of tenancy. If thereafter there is any difference in the services or furniture or the circumstances relating thereto, the rent limit is increased or decreased by the appropriate amount (*t*). Thus, where the landlord engages a porter whose duties include, for example, the collection of refuse from and the carrying of coals to the dwelling, or where by agreement with the tenant a modern refrigerator is substituted for an earlier model, or linoleum is replaced by carpets, the rent limit will be affected.

The question whether the change of services or furniture justifies an increase in the rent limit and the amount by which it should be increased may be determined by a written agreement between landlord and tenant (*u*). In default of agreement the determination must be made by the county court (*u*). The determination may relate to past rental periods and continue in force until revoked or varied by a further determination (*a*).

It is the determination which operates to adjust the rent limit. There is no need for the landlord to serve a notice of increase and the whole of the increase is payable at once (*b*).

The rent recoverable under a contractual tenancy for the basic rental period may include an increase in respect of non-contractual services made under section 40 of the Housing Repairs and Rents Act, 1954. If during any rental period the landlord withholds the whole or any part of such services, the rent for such period is reduced by the appropriate amount (*c*). In default of agreement between landlord and tenant, the county court may determine whether the circumstances justifying a reduction exist, the amount of the reduction and whether it should take effect retrospectively (*d*). This determination likewise remains in effect until revoked or varied by subsequent agreement of the parties or by the county court (*d*).

(*r*) Act of 1920, s. 14 (1).
(*s*) Acts of 1923, s. 8 (2), and 1938, s. 7 (6), require proceedings to be commenced within two years of the date of payment.
(*t*) s. 4 (1).
(*u*) s. 4 (2).
(*a*) The Rent Restriction Rules, 1957, do not prescribe the form in which this application is to be made. Presumably the landlord should adapt Form 8 thereof.
(*b*) *Ibid.*; *cf.* 1957 Act, s. 2 (2).
(*c*) s. 6 (4).
(*d*) ss. 6 (4) and 4 (2).

3. Increase for improvements

What is an improvement? An improvement is defined as including structural alteration, extension or addition and the provision of additional fixtures or fittings but not anything done by way of decoration or repair (*e*). This definition is slightly narrower than the relevant section (now repealed) entitling the landlord to an 8 per cent. increase under the old system of standard rent (*ee*). But it still leaves open the difficult question, which ultimately depends upon the nature of the work in each case, whether work amounts to an improvement or a repair. Repair may involve and often does involve, some measure of improvement (*f*). The test is: if the work which is done is the provision of something new for the benefit of the occupier, that is properly speaking an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn out, then, albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements (*g*). The replacement of an old drainage and cold-water system by its modern equivalent although it results in making the dwelling better than it was before is not an improvement but a repair (*h*). But where because of rising damp the floor rots and the landlord not only lays a new floor but also lays a further layer of concrete on the original foundation, the new floor is a repair but the layer of concrete is a structural alteration amounting to an improvement (*i*). The landlord may find it practicable and economically desirable at one and the same time to carry out works of repair and of improvement. There is nothing in the Act to prevent him apportioning the cost of the work accordingly and making an increase in respect of the improvements.

The execution of certain private street works is treated by the Act as amounting to the making of an improvement (*k*).

Amount of increase. After July 6, 1957, the completion of an improvement in a dwelling increases the rent limit for rental periods beginning after the completion by 8 per cent. per annum of the amount expended on the improvement by the landlord or any superior landlord or any person from whom the landlord or any superior landlord derives title (*l*). But if in respect of the

(*e*) s. 25 (1). *Cf.* the definition of improvement for the purpose of Sched. V, Part III, referred to *ante*, p. 264.

(*ee*) See Rent Act of 1920, s. 2 (1) (a): "Where the landlord has . . . incurred . . . expenditure on the improvement *or* structural alteration. . . ."

(*f*) *Morcom* v. *Campbell-Johnson* [1956] 1 Q.B. 106, *per* Morris L.J., referring to judgment of the Court of Appeal in *Lurcott* v. *Wakeley and Wheeler* [1911] 1 K.B. 905.

(*g*) *Ibid.*, p. 115, *per* Denning L.J.

(*h*) *Morcom* v. *Campbell-Johnson* [1956] 1 Q.B. 106, C.A.

(*i*) *Wates* v. *Rowland* [1952] 2 Q.B. 12, C.A.

(*k*) s. 18 and see *post*, p. 431.

(*l*) s. 5 (1).

improvement an improvement grant has been made under section 20 of the Housing Act, 1949, or a repayment has been made under section 12 of the Clean Air Act, 1956, the landlord must deduct such sums before calculating the amount of the increase (*m*).

Notice of increase. Where the improvement is completed before the rent is initially increased up to the rent limit, an increase in respect of an improvement may form part of an increase made by a notice in Form A (*n*). Increases in respect of improvements completed later must be made in Form C (*n*).

The date at which the increase is to take effect may be any date after the service of the notice (*o*). The increase is not subject to the two-stage process in respect of the initial increase (*p*).

Tenant's right to object. If a tenant contends that the improvement was unnecessary or that a greater amount was expended on it than was reasonable he may apply to the county court for an order cancelling or reducing the increase (*q*). But no application may be made on the ground that it was unnecessary if the improvement was the subject of an improvement grant (*r*). Nor may such an application be made if a tenant under the controlled tenancy consented in writing to the improvement and acknowledged that the rent could be increased on account of the improvement (*s*). The prudent landlord who has not obtained an improvement grant should endeavour to obtain this consent and acknowledgment before effecting the improvement.

The tenant should apply to the county court within one month after the service of the notice of increase in respect of the improvement but the court may allow a longer period for the making of the application (*t*).

The county court may cancel or reduce the increase on the specified grounds and such cancellation or reduction may be ordered to take effect retrospectively (*u*).

Private street works as improvements. If a dwelling which is the subject of a controlled tenancy has access to a street where works have been carried out under section 150 of the Public Health Act, 1875, the Private Street Works Act, 1892, or the corresponding provisions of any local Act, such works may be treated for the purpose of making increases of rent, as an "improvement" (*a*). If, after July 6, 1957, the landlord, or a superior landlord, incurs

(*m*) s. 5 (4).
(*n*) Rent Restriction Regulations, 1957, Sched. I.
(*o*) s. 5 (2).
(*p*) *Ibid.*, *cf.* s. 2 (2).
(*q*) s. 5 (3).
(*r*) Under s. 20 of the Housing Act, 1949.
(*s*) s. 5 (3). The acknowledgment need not be in any particular form.
(*t*) s. 5 (3) and Form 10 of the Rent Restrictions Rules, 1957.
(*u*) s. 5 (3). For the form of order see Form 11 of the Rules.
(*a*) s. 18 (1) and (2).

any expenditure or liability to the local authority in respect of such works, the amount of the expenditure or liability is treated as expenditure incurred in respect of an improvement and may be recovered from the tenant at the rate of 8 per cent. per annum (*b*).

Where, as in the case of a block of flats, the street works benefit not only the dwelling but also other premises belonging to the landlord, the total amount of the landlord's expenditure or liability must be apportioned between the dwelling and the other premises, on the basis of the respective degree of benefit accruing to each (*c*).

As in the case of ordinary improvements any statutory contribution to the landlord's expenditure must be taken into account and deducted before the amount of the increase is calculated (*d*).

The tenant cannot make the objection in the county court that the street works were not necessary or that the amount expended thereon was excessive (*e*).

Improvements completed before July 6, 1957. Certain improvements completed before the commencement of the Act may affect the rent limit (*f*). Where appropriate, such improvements should be taken into account in the initial calculation of the rent limit (*g*).

The greater hardship proviso

Apologia and further notes

We regret that on page 330 some words were omitted in reproducing Schedule VI, para. 21. It should have read:

> "21. For paragraph (h) of the First Schedule to the Act of 1933 (which relates to possession without proof of alternative accommodation), the following paragraph shall be substituted—
>
> ' (h) The dwelling-house is reasonably required by the landlord (*not being a landlord* who has become landlord by purchasing the dwelling-house or any interest therein after the seventh day of November, nineteen hundred and fifty-six) for occupation as a residence. . . .' "

The words in italics are the words omitted. We must thank our various readers who drew our attention to the error.

We understand that differing decisions have been given in county courts on whether or not the greater hardship proviso has gone. To date only one decision has been reported—*Perry* v. *Downing* (1957) L.J. 683 where Judge Carr held that it had gone. Two unreported decisions have held that it has not gone—*Tonge* v. *Wilkinson*, Judge Archibald, and *Corvell* v. *Taylor*, Judge Bassett Q.C.

(*b*) ss. 18 (2) and 5 (1).
(*c*) Proviso to s. 18 (2).
(*d*) s. 18 (3).
(*e*) s. 18 (4).
(*f*) Sched. 7, para. 2.
(*g*) *Ante*, p. 337.

THE LEGAL NATURE OF A SHARE

By D. G. Rice, M.A., LL.B., PH.D., Barrister-at-Law

What is the nature of a share? What is the interest held by members of a company? An analysis of the problem will show that in the course of time the conception first held has been replaced by one of a substantially different character. It is clear that originally shareholders were regarded as owners in equity of the company's property. The numerous old cases bearing on the nature of a share establish beyond reasonable doubt two propositions—(i) that a share was a right to an undivided part of the company's assets and (ii) that in the hands of a member it was an equitable, and not a legal, interest. Let us consider these two propositions in turn.

Several cases of the eighteenth century laid it down that whether shares were personalty or realty depended on the nature of the property of the company to which they related. Thus, if the company's assets consisted of land, the shares in the company were held to be realty, and if the company's property was composed of chattels, the shares were regarded as personalty. The nature of the shares was attracted to that of the company's assets, and it is quite clear that this was so because a share, as its name suggests, was regarded merely as a fractional part of the company's property. It was but a right to an undivided portion of the company's assets (*a*).

However, there flowed from this definition one very serious difficulty. If a single shareholder owned an undivided portion of the company's property, then the shareholders collectively must own all the property. But how could the property be owned by the company, if at the same time the shareholders also exercised proprietary rights over it? The property could not be vested both in the company and the shareholders. This problem was resolved by the distinction originally drawn between the legal and the equitable

(*a*) *Buckeridge* v. *Ingram* (1795) 2 Ves.Jun. 652; *Howse* v. *Chapman* (1799) 4 Ves.Jun. 542. See also the New River Co. cases—*Swayne* v. *Fawkener* (1696) Show. P.C. 207; *Drybutter* v. *Bartholomew* (1723) 2 P.Wms. 127; *Sandys* v. *Sibthorpe* (1778) Dick. 545—where although it is not clear that the property from which the shares were held to take their nature actually vested in the New River Co. (*Townsend* v. *Ash* (1745) 3 Atk. 336; *Bligh* v. *Brent* (1836) 2 Y. & C.Ex. 268 suggest that the company only had the management of it), the court would seem to have reached its decision on the basis that it did. Moreover, had the property not been treated by the court as vesting in the company, it is difficult to see why the shares were not regarded as personalty, constituting solely fractions of the company's right of management.

interest in the property. For the shareholders were regarded as enjoying merely equitable rights. The legal interest in the property and the shares vested in the company on trust for the shareholders (*b*).

Thus, originally a share in the hands of a member was an equitable right to an undivided part of the company's assets. The shareholders were in equity co-owners of the corporate property. However, in the course of time this conception was modified. The nature of a share ceased to be related to the kind of property owned by the company. Shares came to be regarded as personalty, whether or not the property of the company was realty or personalty. They acquired an independent nature. It was perhaps inevitable that this should happen sooner or later. Two reasons can be given. First, it is inconvenient in the extreme if shares are realty as long as the company holds its assets in the form of land, but become personalty if the company sells the land for money. Secondly, on the basis of the original view, what happens where, as must be the case in most instances, the company's property consists partly of realty and partly of personalty? Suppose a company has (a) money, (b) land, (c) goodwill. Are the shares real or personal property? Do they take their nature from the kind of property which makes up the majority of the company's assets? Clearly, the only really satisfactory solution is to give a definite nature to shares, regardless of the kind of assets owned by the company. This view was in fact adopted by Alderson B. in *Bligh* v. *Brent* (*c*), decided in the year 1836, and has found endorsement in a whole chain of succeeding cases (*d*) ultimately culminating in the express provision contained in section 73 (*e*) of the Companies Act, 1948, that shares in a company shall be personal estate (*f*).

As a direct corollary to the classification of shares as personalty irrespective of the nature of the company's assets, it was no longer possible to look upon them as rights to an undivided part of the

(*b*) *Child* v. *Hudson's Bay Co.* (1723) 2 P.Wms. 207; *Harrison* v. *Pryse* (1740) Barn.Ch. 324; *Ashby* v. *Blackwell & the Million Bank* (1765) Ambl. 503. *Cf.* also *Hildyard* v. *South Sea Co. & Keate* (1722) 2 P.Wms. 76 and *Monk* v. *Graham* (1721) 8 Mod. 9.

(*c*) *Ante.*

(*d*) *Duncuft* v. *Albrecht* (1841) 12 Sim. 189; *Myers* v. *Perigal* (1852) 2 De G.M. & G. 599; *Watson* v. *Spratley* (1854) 10 Ex. 222; *Edwards* v. *Hall* (1855) 6 De G.M. & G. 74; *Linley* v. *Taylor* (1859) 1 Giff. 67; *Entwistle* v. *Davis* (1867) 4 Eq. 272; *Ashworth* v. *Munn* (1880) 15 Ch.D. 363 (C.A.); *Colonial Bank* v. *Whinney* (1886) 11 App.Cas. 426 (H.L.); *Short* v. *Treasury Commissioners* [1948] 1 K.B. 116 (C.A.); affirmed on appeal [1948] A.C. 534 (H.L.).

(*e*) Corresponding to the 1929 Act, s. 62 (1), the 1908 Act, s. 22 (1), and the 1862 Act, s. 22.

(*f*) As regards statutory companies, the Companies Clauses Act, 1845, s. 7, provides that shares in such companies shall be deemed personal property, and, even before the passing of this Act, it was customary for a clause to the same effect to be inserted in every private Act incorporating a new company.

company's property. A share had an existence quite independently of the company's assets. Whatever the rights it did confer on its holder, it did not entitle him to lay claim to any part of the assets. He had, of course, an interest in the company, including a right to the available profits of the company, and on a winding up a right to a share of the surplus assets, but no right directly relating to the property. This idea finds direct, albeit imperfect, expression in *Bligh* v. *Brent* (*g*) and is further elaborated in various other cases (*h*) that followed it. After 1836 shares could no longer be regarded, in view of the personal nature inevitably attaching to them, as conferring rights to an undivided part of the company's property. A shareholder had no right, even in equity, to any part of the company's assets.

Nor indeed is the point purely academic. In 1948 it became a matter of great practical importance to the shareholders in Short Bros., which had been taken over during the war by the Minister of Aircraft Production under the Defence Regulations, 1939, the share capital being compulsorily transferred to his nominees. The market value of the shares on the Stock Exchange at the day of transfer was 22s. 3d. or 29s. 3d., according to class, but their value, if calculated as a proportion of the company's assets, was 41s. 9d. The Treasury would only pay the Stock Exchange value, whilst the shareholders claimed—unsuccessfully—the asset value. One of the arguments put forward by the claimants was that the shareholders owned the undertaking. This view was categorically rejected, Evershed L.J. observing in the Court of Appeal (*i*):

> "Shareholders are not, in the eye of the law, part owners of the undertaking. The undertaking is something different from the totality of the shareholdings."

It was quite clear that the shareholders had no claim on the company's assets. Moreover, the court came to the conclusion it did despite the clear merits of the case. The effect of the decision was to enable the Government to appropriate compulsorily the company's assets at a fraction of their true worth.

Although we are predominantly concerned with shares in an incorporated company, it is interesting to note that since the middle of the nineteenth century even shares in an unincorporated company have been regarded as personalty, conferring no direct right to the company's assets. The fact that the legal interest in the property may be vested in the shareholders does not affect the

(*g*) *Ante.*
(*h*) *e.g.*, *Myers* v. *Perigal*, *ante*; *Watson* v. *Spratley*, *ante*; *Edwards* v. *Hall*, *ante*; *Linley* v. *Taylor*, *ante*; *Entwistle* v. *Davis*, *ante*; *Ashworth* v. *Munn*, *ante*.
(*i*) [1948] 1 K.B. 116 (C.A.), at p. 122. Affd. [1948] A.C. 534 (H.L.).

nature of the shares of the company. A shareholder in his capacity as shareholder is only entitled to the fruits of the company's trading. He has no direct claim on the company's assets. This point was clearly made by Martin B. in *Watson* v. *Spratley* (*k*) and adopted in the later case of *Myers* v. *Perigal* (*l*), where the court held that shares in the Oxford Canal Company, which was not incorporated, could not be regarded as interests in land falling within the Mortmain Act. It is noteworthy that, in determining the nature of the shares, the court in both *Watson* v. *Spratley* (*m*) and *Myers* v. *Perigal* (*n*), where the companies in question were unincorporated, applied exactly the same principle as was used in those cases where companies enjoyed corporate status.

A more difficult question arises when we try to determine the nature of a share in an ordinary partnership, where the shares are not freely transferable as they are in companies either incorporated or unincorporated. Logically such a share should constitute personal estate, regardless of the type of property belonging to the partnership. For a partner cannot claim any portion of the partnership assets, but only a share of the trading profits. However, in *Ashworth* v. *Munn* (*o*) the court held that, although no partner had any direct right to the partnership assets, each nevertheless had a charge over land belonging to the partnership, and therefore his interest in the partnership constituted realty falling within the scope of the Mortmain Act. One of the consequences of this decision was, of course, to attribute to a partnership share a dual nature on all those occasions when a charge attached (as would in most instances be the case) to both personalty and realty. Accordingly, it is submitted that a critical examination of the court's reasoning will reveal the decision to be untenable.

Although we have shown that shares in a company are personalty, having an existence independent of the property owned by the company, mention has not yet been made of the fact that all personal property may be classified into either choses in possession or choses in action (*p*). It is necessary, therefore, in the interests of completeness to indicate into which of these two categories company shares fall. It is perhaps not surprising to learn that they are regarded as choses in action. Although some of the personal property owned by the company may constitute choses in possession, in view of the fact that shares are not directly connected with the company's property, this point becomes totally irrelevant. Accordingly,

(*k*) *Ante.*
(*l*) *Ante.*
(*m*) *Ante.*
(*n*) *Ante.*
(*o*) *Ante.*
(*p*) Including choses in equity.

the cases (*q*) have held shares to be choses in action, the point proving of considerable importance in determining whether shares constitute goods, wares or merchandise within section 17 of the Statute of Frauds (*r*), and in deciding whether they fall within section 44 (iii) of the Bankruptcy Act, 1883 (*s*).

We see from our analysis so far that from around 1836 a share ceased to be considered in any way identifiable with the property belonging to the company. It enjoyed an acknowledged existence of its own, being regarded as personal estate falling within the classification of choses in action. Thus, the conception of a share became distinct from and more complex than the original idea of a right to an undivided part of a company's assets. A more advanced juristic conception developed. Of course, the exact rights attaching to a share depend on the memorandum and articles (*t*). The important point to be acknowledged at this juncture is that in accordance with the legal theory developed from 1836 onwards a share confers on its holder not an aliquot part of the company's assets, but a fraction of all the rights and duties of the totality of shareholders, such rights and duties being set out in the memorandum and articles (*u*). "It is the interest of a person in the company, that interest being composed of rights and obligations which are defined by the Companies Act and by the memorandum and articles of association of the company (*a*)." Perhaps the best known instance in the modern law of any judicial attempt to define a share is to be found in *Borland's Trustee* v. *Steel Bros. & Co.* (*b*), where Farwell J.'s dictum (subsequently approved by the House of Lords in *I. R. C.* v. *Crossman*; *I. R. C.* v. *Mann* (*c*)) appears as follows (*d*):

> "A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders

(*q*) See Lord Denman C.J. in *Humble* v. *Mitchell* (1839) 11 Ad. & E. 205, at p. 208; Sir L. Shadwell in *Duncuft* v. *Albrecht*, *ante*, at p. 198; Fry L.J. (upheld in H.L.) in *Colonial Bank* v. *Whinney*, *ante*, at pp. 286–289. *Cf.* also *Harold* v. *Plenty* [1901] 2 Ch. 314; *Re V. G. M. Holdings, Ltd.* [1942] Ch. 235; *R.* v. *Williams* [1942] A.C. 541; *Watson* v. *Spratley*, *ante*, and *Ex p. Agra Bank* (1868) L.R. 3 Ch.App. 555. Two cases to the contrary—*Ex p. Union Bank of Manchester* (1871) L.R. 12 Eq. 354 and *Société Générale de Paris* v. *Tramways Union Co.* (1884) 14 Q.B.D. 424 (C.A.)—must be considered overruled.

(*r*) Later the Sale of Goods Act, 1893, s. 4, and now repealed.

(*s*) Now the Bankruptcy Act, 1914, s. 38 (c).

(*t*) And less specifically on the Companies Act, 1948.

(*u*) See *post*.

(*a*) *Per* Lord Russell in *I.R.C.* v. *Crossman*; *I.R.C.* v. *Mann* [1937] A.C. 26 (H.L.), at p. 66. See also Lord Macmillan at pp. 69, 70.

(*b*) [1901] 1 Ch. 279.

(*c*) *Ante*.

(*d*) At p. 288.

> *inter se* in accordance with section 16 of the Companies Act, 1862. The contract contained in the articles of association is one of the original incidents of the share. A share is . . . an interest measured by a sum of money and made up of various rights contained in the contract, including the right to a sum of money of a more or less amount."

One other change in the conception of a share ought to be adverted to at this point. A share is no longer regarded as an equitable interest (*e*). A shareholder now enjoys legal rights. As a share is no longer a mere fractional part of the company's assets, but something quite independent thereof, clearly there is no necessity for the shareholders to have solely an equitable interest. Indeed, if the interest were solely equitable, in whom would the legal interest be vested? Clearly the company does not own the shares. It follows, then, that although the company owns the property, the members own the shares in law and in equity. There would appear to be no specific case drawing attention to this development, but it is an inevitable consequence of the decision laid down in *Bligh* v. *Brent* (*f*) that shares are not rights to a fractional part of the company's assets. Thus, we may say that the modern conception of a share can be stated broadly in the following terms. A share is a legal chose in action, conferring upon its holder a fraction of the sum total of rights and duties enjoyed by, and imposed on, the shareholders as a whole (*g*).

These rights, which fall short of actual ownership, are defined by the memorandum and articles of association (*h*). We must now consider their nature rather more closely.

Shareholders' Contract

It would seem to be generally accepted that although shares are undoubtedly items of property (*i*), the rights they confer are based on contract. Admittedly, there are two difficulties that prejudice this conclusion, namely, (i) that although the basic remedy for breach of contract lies in damages, the court will not allow this remedy where the memorandum or articles have been contravened, for fear of diminishing the share capital of the company (*k*), and (ii)

(*e*) Though it is, of course, enforceable in equity.

(*f*) *Ante*.

(*g*) Needless to say, a share does not confer part ownership of the company itself. A company is a legal person incapable of ownership. The shareholders collectively constitute the company, but they do not own it.

(*h*) And less specifically by the general provisions of the Companies Act, 1948.

(*i*) See *Cork & Brandon Ry.* v. *Cazenove* (1847) 10 Q.B. 935; *North West Ry.* v. *McMichael* (1850) 5 Exch. 114.

(*k*) See *Houldsworth* v. *City of Glasgow Bank* (1880) 5 App.Cas. 317 (H.L.). *Cf.* also Lindley L.J. in *Re Addlestone Linoleum Co.* (1887) 37 Ch.D. 191 (C.A.). The fact that the company may well have vast reserves is apparently immaterial.

that through the medium of a special resolution deriving its authority from the Companies Act, 1948, the rights of the minority can in defiance of their wishes be varied by the unilateral action of the majority (*l*). However, the cases and textbooks constantly refer to the memorandum and articles of association (which contain the rights in question) as constituting a contract, and this view is strongly endorsed by section 20 (1) of the Companies Act, 1948, the exact terms of which read as follows:

> " (1) Subject to the provision of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member to observe all the provisions of the memorandum and of the articles."

Now, it is quite clear that the memorandum and articles are regarded under the section as constituting a contract. However, although section 20 (1) confirms that shareholders' rights are based on contract, it adds to the confusion surrounding the exact nature of the contract. For it does not make it clear who is the party with whom the shareholders contract (*m*). We must now examine this question.

(a) *The party with whom the shareholders contract.* Do the shareholders contract (a) with the company or (b) merely with one another or (c) with both the company and one another? Where a member seeks to enforce a right conferred on him by the memorandum or articles of association, against whom does his action lie? On this question the authorities are at variance. Dicta can be cited to support any of the three possibilities suggested above.

Thus, in support of the proposition that the contract is with the shareholders *inter se* are to be found such authorities as *Pritchard's Case* (*n*), *Eley* v. *Positive Government Security Life Assurance Co.* (*o*), *Re Wheal Buller Consols* (*p*), *Browne* v. *La Trinidad* (*q*), *Re Famatina Development Corpn.* (*r*) and *Wood* v. *Odessa Waterworks Co.* (*s*), whilst the protagonists of the contrary

(*l*) It is a basic principle of the law of contract that the terms of an agreement shall not in the absence of any express provision to the contrary be subject to modification by unilateral action.

(*m*) Contrast New Zealand legislation: see *post*, p. 440, n. (*g*).

(*n*) (1873) 8 Ch.App. 956.

(*o*) (1875) 1 Ex.D. 20; on appeal (1876) 1 Ex.D. 88 (C.A.).

(*p*) (1883) 38 Ch.D. 42 (C.A.).

(*q*) (1887) 37 Ch.D. 1 (C.A.).

(*r*) [1914] 2 Ch. 271 (C.A.).

(*s*) (1889) 42 Ch.D. 636, at p. 642. See also Farwell J. in *Borland's Trustee* v. *Steel Bros. & Co.*, *ante*, at p. 288; Wright J. in *Ex p. Beckwith* [1898] 1 Ch. 324, at p. 326.

Although the argument of those who support the view that the shareholders contract with each other is seriously weakened by the fact that there is no actual case where one member did in fact bring an action against another, this nearly

view, *viz.*, that the contract is with the company, can cite in vindication of their contention such cases as *Johnson* v. *Lyttle's Iron Agency* (*t*), *Imperial Hydropathic Hotel Co.* v. *Hampson* (*u*), the dictum of Farwell L.J. in *Salmon* v. *Quin & Axtens, Ltd.* (*a*), and that of Lord Herschell in *Welton* v. *Saffery* (*b*). The *locus classicus*, however, is *Hickman* v. *Kent or Romney Marsh Sheep-Breeders' Assocn.* (*c*), the facts of which are as follows. The articles provided that any dispute between a member and the company should be referred to arbitration. Hickman, a member, brought an action against the company. Astbury J. held that the company was entitled to have the action stayed, because the effect of the articles was to establish a contract between Hickman and the company to refer disputes between them to arbitration. The learned judge, after drawing attention to the conflicting views expressed in textbooks of the highest repute, went on to examine at length the previous cases, and ultimately concluded that the articles of association constituted a contract between the members and the company. Admittedly certain serious objections can be levelled at Astbury J.'s reasoning (*d*), but whichever view he took of the law he was bound to be exposed to criticism owing to the confused state, and he has in fact been followed by the Court of Appeal in *Beattie* v. *Beattie* (*e*). Moreover, it is interesting to note that Astbury J.'s decision finds additional support in the New Zealand cases, *Walsh* v. *Matamau Co-op. Dairy Co., Ltd.* (*f*) and *Gore Bros.* v. *Newberry Dairy Co., Ltd.* (*g*), where the principles he had laid down were cited with approval.

Although the question is not free from doubt, it is submitted that the balance of judicial authority suggests that under section 20 the

happened in *Borland's Trustee* v. *Steel Bros. & Co.*, *ante*, and certainly in *Wood* v. *Odessa Waterworks Co.*, *ante*, the court decided the case on the basis that it could.

(*t*) (1877) 5 Ch.D. 687 (C.A.).

(*u*) (1883) 23 Ch.D. 1, at p. 13.

(*a*) [1909] 1 Ch. 311 (C.A.), at p. 318.

(*b*) [1897] A.C. 299 (H.L.), at p. 315. See also *Oakbank Oil Co.* v. *Crum* (1882) 8 App.Cas. 65; *Bradford Banking Co.* v. *Briggs & Co.* (1886) 12 App.Cas. 29 (H.L.); *Burdett* v. *Standard Exploration Co.* (1899) 16 T.L.R. 112.

(*c*) [1915] 1 Ch. 881.

(*d*) *e.g.*, his explanation of previous authorities conflicting with his viewpoint is unconvincing. Moreover, dicta in other cases are ignored.

(*e*) [1938] Ch. 708 (C.A.). *Cf.* also *London Sack & Bag Co.* v. *Dixon & Lugton* [1943] 2 All E.R. 763 (C.A.).

(*f*) [1918] N.Z.L.R. 850. *Cf.* also *Elandsfontein G. M. Co.* v. *McEwan* (1889) 10 N.Z.L.R. 52.

(*g*) [1919] N.Z.L.R. 205. It is to be noted, however, that the phraseology employed in the New Zealand Companies Act is rather more explicit than that contained in s. 20 of the English Act. For the New Zealand Act provides that the memorandum and articles are to bind as if there were in the memorandum or articles a covenant with the company on the part of each member. However, even the New Zealand Act fails to state the converse, namely, that the company is bound to each member.

members do contract with the company. The two latest authorities, *Hickman's* case (*h*) and *Beattie* v. *Beattie* (*i*), come down strongly in favour of this view, and modern writers (*k*) generally accept Astbury J.'s interpretation of the law. Moreover, it is also submitted that the company covenants with the shareholders. Although section 20 does not expressly state that the company is bound absolutely, but only provides that it shall be bound as if the members (there being no mention of the company) had contracted to observe the provisions of the memorandum and articles, it is submitted that, if it is once conceded that the memorandum and articles constitute a contract between the shareholders and the company, then not only are the shareholders bound to the company, but the company must also be bound to the shareholders (*l*).

If, then, the memorandum and articles constitute a contract between the company and the shareholders, we are faced with the natural question why section 20 does not expressly state this. The answer depends on historical considerations. Before the Companies Acts came into being, the normal legal form for joint commercial activity was the partnership. A partnership is not a corporation, and, therefore, does not enjoy the advantages of a corporation. However, the legal draftsmen of the day did their utmost to ensure that the partnership (the unincorporated company) gained many of the advantages enjoyed by a corporation. Thus, when businessmen engaged in joint trading activities within the framework of a partnership, a deed of partnership was drawn up, and the deed frequently provided that the members should be bound to the same extent as if each had subscribed his name and affixed his seal thereto, and had covenanted on behalf of himself, his heirs, executors and administrators, to conform to all the regulations in the deed. Now, obviously, in the case of a partnership the members could not bind themselves to the company nor could the company be bound to the members. No company existed; this was a mere partnership. However, when the Companies Acts were passed, the clause normally inserted in a deed of partnership was taken over in substance, and the draftsmen failed to allow fully (*m*) for the fact that under the Act a company had come into being, and that, therefore, the wording must be amended accordingly. The result was that some learned judges continued to regard the articles of

(*h*) *Ante.*

(*i*) *Ante. Cf.* also *London Sack & Bag Co.* v. *Dixon & Lugton*, *ante.*

(*k*) See, for example, Buckley on the *Companies Acts*, 13th ed., Palmer's *Company Precedents*, Pt. I, 17th ed., and Halsbury's *Statutes of England*, 2nd ed.

(*l*) As it was, for example, in *Johnson* v. *Lyttle's Iron Agency*, *ante*; *Oakbank Oil Co.* v. *Crum*, *ante*; and *Burdett* v. *Standard Exploration Co.*, *ante.*

(*m*) They allowed for it partly by inserting the words "shall . . . bind the company."

association as a mere deed of partnership binding the members *inter se* (*n*). It is submitted, therefore, that the imperfections of the wording of section 20 are fully understandable, if reference is made to the historical circumstances attending the clause's original formation.

The next problem to be resolved is this: granted there is a binding contract between the members and the company under section 20, is there also a binding contract between the members *inter se*? For example, suppose A and B are shareholders in a company whose articles of association provide that each shareholder must, in the event of his wanting to sell, first offer his holding to the other shareholders. A is about to sell to C without first offering his shares to B. Can B bring an action against A for an injunction to restrain him from transferring the shares as well as an action against the company to restrain it from registering the transfer ? (*o*). There are dicta which suggest that the articles of association do bind the members *inter se* as well as to the company. The clearest authority is *Wood* v. *Odessa Waterworks Co.* (*p*), where Stirling J. said (*q*):

> "The articles of association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other" (*r*).

Further, the view gains additional support from all those authorities cited above where it was held that the members had contracted, not with the company, but with one another. Assuming that it was an incorrect statement of the law to say there was no contract with the company, does it necessarily follow that there was not at any rate a contract *inter se*? It is submitted that it is arguable that the dicta in such authorities as *Eley's* case (*s*) and *Browne* v. *La Trinidad* (*t*) should not be rejected out of hand, but should be partially upheld on the ground that the learned judges were right in holding that there was a contract *inter se*, though they went too far in saying that no contract existed with the company (*u*).

(*n*) ". . . in themselves the articles of association are simply a contract as between the shareholders *inter se* in respect of their rights as shareholders. They are the deed of partnership by which the shareholders agree *inter se*." (*Per* Mellish L.J. in *Pritchard's Case*, *ante*, at p. 960.)

(*o*) *Borland's Trustee* v. *Steel Bros. & Co.*, *ante*.

(*p*) *Ante*.

(*q*) At p. 642.

(*r*) This dictum was cited in *Salmon* v. *Quin & Axtens, Ltd.*, *ante*, by Farwell L.J. who considered it "accurate subject to this observation that it may well be that this court would not enforce the covenant as between individual shareholders in most cases."

(*s*) *Ante*.

(*t*) *Ante*.

(*u*) This theory of the real nature of the contract might reconcile the apparent conflict between the dictum of Bowen L.J. in *Imperial Hydropathic Hotel Co.* v. *Hampson*, *ante* (at p. 13), and that of Cotton L.J. in the same case (at p. 10).

Unfortunately, the simplicity of this solution meets with difficulties. First, it cannot be supported by any actual decision. And, secondly, there are dicta specifically asserting that the articles do not bind the members *inter se*. For, in *Welton* v. *Saffery* (*a*), Lord Herschell said (*b*):

> ". . . there is no contract in terms between the individual members of the company . . . no member has, as between himself and another member, any right beyond that which the contract with the company gives."

It is submitted, then, that although the point is not altogether clear, the balance of authority suggests that the memorandum and articles of association constitute under section 20 a binding contract only between the members and the company, and not between the members *inter se* as well.

(b) *The kind of rights having contractual force.* We must now turn to consider another problem: granted that the memorandum and articles of association constitute a contract only between the members and the company, is the contract binding in respect of all rights purporting to be conferred by the memorandum and articles? One thing at any rate is certain. An outsider (*i.e.*, a non-member) cannot (*c*) bring an action against either the company or its members to enforce a right which the memorandum or articles of association purport to grant him. "No articles can constitute a contract between the company and a third person" (*d*). For, an outsider is not a party to the memorandum or articles (*e*). When, however, we turn to consider the position of a member certain serious problems emerge, problems which can best be broken down into four questions. First, can a member bring an action against the company to enforce a right granted to him under the memorandum or articles otherwise than in his capacity as a member? It would seem from the decisions in such authorities as *Eley's Case* (*f*) and *Browne* v. *La Trinidad* (*g*) that he cannot. Moreover, this view is amply confirmed by Astbury J. in *Hickman* v. *Kent or Romney Marsh Sheep-Breeders' Assocn.* (*h*) and Greene M.R. in *Beattie* v. *Beattie* (*i*).

(*a*) *Ante.*
(*b*) At p. 315.
(*c*) Subject to the doctrine of the implied contract: see *post*, pp. 445–447 *et seq.*
(*d*) *Per* Astbury J. in *Hickman* v. *Kent or Romney Marsh Sheep-Breeders' Assocn.* [1915] 1 Ch. at p. 900.
(*e*) *Melhado* v. *Porto Alegre Ry.*, *ante*; *Re Rotherham Alum & Chemical Co.* (1883) 25 Ch.D. 103 (C.A.).
(*f*) *Ante.*
(*g*) *Ante.*
(*h*) [1915] 1 Ch. at p. 900.
(*i*) [1938] Ch. 708, at p. 721.

The second question we have to consider is whether a member can bring an action against the other members to enforce a right due to him under the articles of association in some capacity other than that of member? Of course, if the view contended for earlier on is correct, *viz.*, that the shareholders do not contract *inter se*, the problem we have posed cannot arise. But on the assumption that our viewpoint is not accepted, it is difficult to see any logical reason why a member should have a remedy against his fellow-members, when, as has been shown above, on the basis that the contract is between the company and its members he has no remedy against the company itself (*k*). Moreover, certain dicta of Scott L.J. (*l*) and MacKinnon L.J. (*m*) in *London Sack and Bag Co.* v. *Dixon and Lugton* (*n*) seem to support this conclusion.

The third question to be asked is whether a member can bring an action against the company to compel it to comply with rights conferred by the memorandum or articles on outsiders or on members in a capacity other than that of members. It is submitted that the answer to this problem, which can be inferred from the solution we tendered to our first question, is undoubtedly in the negative. For if a member had a right *qua* member to compel the company to carry out the terms of the memorandum and articles of association, he would be entitled to compel the company to fulfil those particular obligations due under the memorandum or articles to himself otherwise than as a member. A clear distinction could be drawn between rights which he enjoyed as a member in common with all other members and rights peculiar to himself, *e.g.*, that he be employed by the company as its solicitor or that he be remunerated at a certain rate by the company for his services as a director. It would be possible for him in a particular instance to claim in his capacity as a member that the company should discharge an obligation due personally to a particular member and the fact that he himself was that member would be quite accidental and immaterial. Although the point was not there argued the failure of the plaintiff shareholder to enforce a right personal to himself in both *Eley* v. *Positive Government Security Life Assurance Co.* (*o*) and *Browne* v. *La Trinidad* (*p*) clearly demonstrates that a member has no right to compel a company to fulfil

(*k*) *Contra*, however, the implication in Sargant J.'s judgment in *Re Famatina Development Corpn.*, *ante*, at p. 279, that had the plaintiff sued the members instead of the company he would have succeeded. *Cf.* also *Eley's Case*, *ante*, and *Browne* v. *La Trinidad*, *ante*.

(*l*) [1943] 2 All E.R. 763 (C.A.), at p. 765.

(*m*) *Ibid.*, at p. 767.

(*n*) *Ibid.*

(*o*) *Ante.*

(*p*) *Ante.*

personal obligations due under the memorandum or articles to outsiders or other members (*q*).

The last question we have to pose is whether a member can bring an action against the other members, as distinct from the company, for the enforcement of personal rights conferred on outsiders or other members by the memorandum or articles. Here we have substantially a combination of questions two and three. Now, as we have concluded that the answer to these two questions is in the negative, this same conclusion applies *a fortiori* to our fourth and last question. Thus, to sum up very briefly our conclusions so far, we may say that the memorandum and articles constitute a genuine contract binding the members to the company (but probably not to each other) and the company to the members, but that the memorandum and articles have no contractual effect insofar as they purport to confer rights on members in some capacity other than that of members.

(c) *The doctrine of the implied contract.* However, it may readily be seen that the above principle does not do substantial justice in those cases where a member acts on the faith of the memorandum or articles of association, but subsequently finds he cannot enforce the rights purporting to be conferred on him, because they do not relate to him *qua* member. Moreover, the same hardship applies to an outsider. For example, suppose a person is appointed a director under the articles of association for ten years at a salary of £1,000 per annum, and he acts as director for two years, and then in contravention of the articles of association the company dismisses him, surely it is inequitable that, when he has acted on the faith of the terms as laid down in the articles, the company should be free to ignore them with impunity. In order to do justice in such a case, the doctrine of the implied contract has come into being. The doctrine can be stated as follows. If a clause in the memorandum or articles of association purports to confer a personal right or to impose a personal obligation on a member (*i.e.*, a right or obligation not belonging to the members generally) or, for that matter, on an outsider, so that it is clear that contractual relations are intended to exist between such a member or outsider and

(*q*) Note, however, that in *Beattie* v. *Beattie, ante*, Greene M.R. by drawing a distinction (at pp. 722, 723) between a plaintiff suing *qua* member and suing in some other capacity perhaps lends support to an affirmative answer to our question. Nevertheless, there is a difference between compelling a company to refer matters in dispute to arbitration (as was the point at issue in this case) and forcing it to discharge obligations due to outsiders or members otherwise than as members. Moreover, the distinction put forward by Greene M.R. is a subtlety that has escaped the court in all other cases, and its acceptance would only unduly complicate the law. Even Greene M.R. himself adds very far-reaching qualifications (at pp. 722, 723).

the company, and if the member or outsider and the company enter into the relations contemplated by the clause, the law deems the parties to have established a binding contract on the terms set out in the clause (*r*).

The result of the doctrine is that, where directors who have no formal contract have acted on the basis of the articles of association, they are, amongst other things, entitled to receive the remuneration due to them under the articles (*s*) and are liable to take up shares if so required by the articles (*t*). The absence of an independent agreement is compensated for by the doctrine of the implied contract (*u*). Nevertheless, although the doctrine has found frequent judicial approval (*a*) and application (*b*), it does not really give adequate protection against injustice because the articles can be altered by a special resolution of the company in general meeting. When an implied contract arises on the terms set out in the memorandum or articles, the contract is subject to the proviso that the terms so set out are liable to be altered in accordance with the machinery set up by the memorandum and articles or the Companies Act. Thus, if the articles of association appoint X as a permanent director for life and he acts as such, the company is contractually bound so to employ him for life unless the articles are altered (*c*). The implied contract arising (as distinct from an express contract (*d*) having an independent existence) is only binding conditionally, *i.e.*, conditionally on there being no alteration of the articles. As Scrutton L.J. said of such a contract in *Shuttleworth* v. *Cox Bros. & Co. (Maidenhead), Ltd.* (*e*):

> "It is not a contract constituting him as permanent director unconditionally but is a contract constituting him as permanent director subject to a power of terminating his appointment in

(*r*) See *Swabey* v. *Port Darwin Gold Mining Co.* (1889) 1 Meg. 385 (C.A.).

(*s*) *Swabey* v. *Port Darwin Gold Mining Co.*, *ante*; *Re International Cable Co.* [1892] W.N. 34; *Ex p. Beckwith* [1898] 1 Ch. 324.

(*t*) *Isaac's Case* [1892] 2 Ch. 158 (C.A.); *Re Bolton & Co., Salisbury-Jones and Dale's Case* [1894] 3 Ch. 356 (C.A.); *Salton* v. *New Beeston Cycle Co.* [1899] 1 Ch. 775.

(*u*) *Per* Stirling J. in *Isaac's Case*, *ante*, at p. 164; Cozens-Hardy L.J. in *Molineux* v. *London, Birmingham & Manchester Insurance Co.* [1902] 2 K.B. 589 (C.A.), at p. 596; Davey L.J. in *Re Bolton & Co.*, *ante*, at p. 363.

(*a*) See Mellish L.J. in *Pritchard's Case*, *ante*, at p. 960; Stirling J. in *Re International Cable Co.*, *ante*; Kay L.J. in *Isaac's* case, *ante*, at p. 168; Wright J. in *Ex p. Beckwith*, *ante*, at pp. 326, 327; Cozens-Hardy J. in *Salton* v. *New Beeston Cycle Co.*, *ante*, at p. 778.

(*b*) See particularly *Re T. N. Farrer, Ltd.* [1937] Ch. 352 and the recent cases, *Read* v. *Astoria Garage (Streatham), Ltd.* [1952] Ch. 637 and *Hayes* v. *Bristol Plant Hire, Ltd.* [1957] 1 W.L.R. 499.

(*c*) See *Imperial Hydropathic Hotel Co.* v. *Hampton*, *ante*, where, however, no such alteration was made.

(*d*) See *Nelson* v. *James Nelson & Sons* [1914] 2 K.B. 770; *cf.* however the effect of *Read* v. *Astoria Garage (Streatham), Ltd.*, *ante*.

(*e*) [1927] 2 K.B. 9 (C.A.), at p. 22. *Cf.* also Simonds J. in *Re T. N. Farrer, Ltd.*, *ante*, at p. 360.

> accordance with the articles or any modification of the articles sanctioned by the Companies Act."

We see, then, that a qualification must be made to the basic doctrine. Although the principle of the implied contract attempts to remedy injustice where the terms of the memorandum and articles have been acted on in good faith, the efficacy of the doctrine is largely undermined by the liability of the implied contract to alteration along with any modification of the memorandum or articles.

Summary

Finally, before bringing this article to a close it is convenient at this point to summarise very briefly our analysis of the legal nature of a share. We have shown that a share is not a mere right to an undivided portion of the company or its assets. It is a legal chose in action conferring on its holder a fraction of the sum total of rights and duties enjoyed by and imposed on the shareholders as a whole. These rights and duties which are principally contained in the memorandum and articles are based on contract, though the contract is between the company and the members and not between the members *inter se*. But, for the rights and duties to have any contractual force, they must, subject to the doctrine of the implied contract, relate to the shareholders *qua* shareholders and not to them in some other capacity.

THE SCOPE OF SECTION 53 OF THE TRUSTEE ACT, 1925

By Professor O. R. Marshall, m.a., ph.d.

In an article on " Deviations from the Terms of a Trust " which was published in Volume 17 of the *Modern Law Review* in 1954 (*a*), I made two suggestions (*b*) about the scope of section 53 of the Trustee Act, 1925: first, that it conferred upon the court power to deal with the beneficial interests of infants and was, in this respect, complementary to section 57, which conferred the power to authorise dealings with the trust property; and, secondly, that the jurisdiction conferred appeared to be wide enough in an appropriate case to cover the ultimate preservation of the capital of the trust from diminution through estate duty. I now propose to re-examine the section in the light both of its history and of the interpretation put upon it by Upjohn J. in *Re Heyworth's Contingent Reversionary Interest* (*c*), and by Wynn-Parry J. in *Re Meux's Will Trusts* (*d*).

Section 53 provides that " where an infant is beneficially entitled to any property the court may, with a view to the application of the capital or income thereof for the maintenance, education or benefit of the infant, make an order—(a) appointing a person to convey such property; or (b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the court may think fit."

Re Hambrough's Estate

The section is new and its enactment is generally assumed to have been intended to get over the difficulty which emerged in *Re Hambrough's Estate* (*e*) in 1909, though it by no means follows that its interpretation should be restricted to achieving this end alone and, indeed, the section is not by its terms so confined. In

(*a*) (1954) 17 M.L.R. 420–433.
(*b*) *Ibid.*, at pp. 432–433.
(*c*) [1956] 2 W.L.R. 1044. *Cf. Re Cockerell's Settlement Trusts* [1956] 2 W.L.R. 1050, where Upjohn J. authorised the sale of a reversionary interest settled upon various trusts, the trusts remaining the same after the sale. He exercised jurisdiction under the Trustee Act, 1925, s. 57.
(*d*) [1957] 3 W.L.R. 377.
(*e*) [1909] 2 Ch. 620.

that case land was limited, in the events which happened, to A for life, with remainder to B, his infant son, in tail, with remainder to C for life, with remainder to D in tail, with further remainders over. A became bankrupt and from the date of his bankruptcy he had no funds and no income out of which B could be maintained. Several orders were thereupon made by the court to provide for the maintenance of the infant B, and, by one of these, trustees were appointed to convey and did convey the land for all such estate as B could, if of full age with the concurrence of A as the protector of the settlement, have conveyed, to the mortgagees, subject, of course, to A's life interest, but discharged, so far only as B could with such concurrence, if of full age, have discharged the same, from his estate tail.

C and D contended that this order was made without jurisdiction and that the conveyance to the mortgagees was ineffectual to bar their interests. Warrington J. upheld this contention and concluded that, notwithstanding the orders and the mortgage, the land remained limited to the original uses of the settlement. In so doing, he distinguished *Re Howarth* (*f*) and followed *Re Hamilton* (*g*) and *Cadman* v. *Cadman* (*h*).

Re Howarth concerned an application to charge the fee simple to which an infant was entitled in possession with money provided for his past maintenance. The Court of Appeal allowed the application on the principle that anyone who supplied an infant with "necessaries" could obtain a judgment against him which would charge his real estate, and the order which it was proposed to make came to substantially the same thing.

On the other hand, both *Re Hamilton* and *Cadman* v. *Cadman* concerned infant tenants in tail in remainder for whom no income was available for maintenance, and on whose behalf applications were made to the court that their interests should be so dealt with as to provide maintenance. The Court of Appeal declined jurisdiction in both cases on the ground that the principle of *Re Howarth* was inapplicable. A judgment at law against the infant in respect of "necessaries" would be ineffectual against his estate in remainder and "we should, therefore, have to invent some new form of execution before we could make an order binding the estates" (*i*). Indeed, in *Cadman* v. *Cadman* the Court of Appeal went further, and doubted whether the decision in *Re Howarth* could be supported on principle, but in view of the later decision in *Re Montagu* (*k*) it may be that these doubts are ill-founded.

(*f*) (1878) 8 Ch.D. 415.
(*g*) (1886) 31 Ch.D. 291.
(*h*) (1886) 33 Ch.D. 399.
(*i*) (1886) 31 Ch.D. 291, at p. 295.
(*k*) [1896] 1 Ch. 549.

Re Gower's Settlement

So matters stood until *Re Gower's Settlement* (*l*) in 1934—the only decision upon section 53 before *Re Heyworth's Contingent Reversionary Interest* and *Re Meux's Will Trusts*. The point involved was essentially the same as that in *Re Hambrough's Estate* and was thus propounded by Clauson J. (*m*): "A.B., an infant, being tenant in tail in remainder of Blackacre with divers remainders over: can the court by virtue of section 53 effectually authorise a mortgage of Blackacre (subject to the interests having priority over the infant's tenancy in tail) so framed as to vest in the mortgagee a security which will be as effective a bar against A.B.'s issue who take under the entail and subsequent remaindermen as if the infant was of full age and had executed the conveyance in accordance with the Fines and Recoveries Act, 1833?"

It was argued that the power of the court under the section was limited to authorising a conveyance of the infant's actual estate and did not extend to any larger estate which the infant could have created out of his present estate had he not been an infant. But Clauson J. firmly and conclusively rejected this argument (*n*): "It seems absurd to suppose that the Legislature can have intended the section to be read so literally as to produce that result. If it is possible to construe the section so as to enable the court to give a mortgagee a title not to such a very limited interest as that but to such an interest as the infant, if of full age, could create under the Fines and Recoveries Act, 1833, that is, at the least, a statutory base fee, and with the proper consent, a fee simple, such a construction should obviously be adopted in preference to the alternative narrow and even absurd construction. In my view, I am free to adopt the wider construction." Moreover, the learned judge was able to find justification for this wider construction both in the cases and in comparable legislation. Thus, to take but one example: where the legislature (*o*) had authorised the court to order an infant to convey lands it was held by Langdale M.R. in *Radcliffe* v. *Eccles* (*p*) that an infant tenant in tail could be ordered not only to convey such estate as was in him, but, by a proper assurance under the Fines and Recoveries Act, 1833, to vest in the purchaser a larger estate than he himself had at that moment.

Re Heyworth's Interest and *Re Meux's Will Trusts*

I now turn to *Re Heyworth's Contingent Reversionary Interest*. In that case the infant applicant was one of a class contingently

(*l*) [1934] Ch. 365.
(*m*) *Ibid.*, at p. 369.
(*n*) *Ibid.*, at p. 370.
(*o*) 1 Will. 4, c. 47, s. 11.
(*p*) (1836) 1 Keen 130.

interested in the capital of two trust funds subject in each case to the life interest of her grandmother, a lady of some seventy-four years of age. An agreement was entered into, subject to the approval of the court being obtained on behalf of the infant, under which the grandmother agreed to purchase for cash from the infant and the other remaindermen their respective contingent reversionary interests. The fiscal advantage of this was that the sums paid to the reversioners would not be liable to estate duty, however soon the grandmother should die after the completion of the transaction. Moreover, the evidence showed that the sums offered were substantially in excess both of the actuarial value of the respective reversions and of the sums which would be receivable on the grandmother's death unless there was, in the meantime, some wholly unexpected fall in the rate of estate duty. As Upjohn J. said (*q*): "The arrangement is one which is most advantageous from the point of view of the infant in almost every conceivable circumstance, and, if I have jurisdiction to do so, I shall most certainly sanction it."

Nevertheless he was unable to hold that jurisdiction existed either under section 53 or under the inherent authority of the court. As there was no question either of the maintenance of the infant, the compromise of disputed rights or the salvage of the trust property, and as *Chapman* v. *Chapman* (*r*) makes it clear that the court does not possess plenary powers to alter a trust because alteration is thought to be advantageous to beneficiaries who are infants or not yet born, the denial of the inherent jurisdiction is not surprising. But the view that section 53 is also inapplicable is disappointing and merits further examination.

The learned judge's interpretation of section 53 is contained in the following passage (*s*): " . . . to bring the jurisdiction into play there must be 'a view to the application' of the capital or income for the maintenance, education or benefit of the infant. Mr. Jennings concedes that that phrase is equivalent to 'for the purpose of applying.' Shorn of the niceties of legal argument, this deed is intended to put an end to the trusts created by the settlement, by enlarging the interest of the life tenant to include some or all of the reversioners' interests by means of a sale of those reversionary interests for cash. The infant (*inter alios*) receives an immediate absolute interest in a sum of cash in exchange for a future contingent interest. *The deed is not in the least degree entered into with a view to the application of, or for the purpose of*

(*q*) [1956] 2 W.L.R. 1044, at p. 1048.
(*r*) [1954] A.C. 429.
(*s*) [1956] 2 W.L.R. 1044, at p. 1049.

applying, any capital or income of the infant for her benefit. If I sanctioned this scheme on behalf of the infant I should be reading the section as though it empowered the court to convey the property of an infant whenever it was for her benefit. Unfortunately, the section only confers a more limited jurisdiction."

Now, it is surprising that the only previous case on the section, namely, *Re Gower's Settlement*, was not considered in the judgment though it was referred to by counsel in argument. In view of the learned judge's dictum that (*t*) "in relation to personal estate section 53 . . . may be taken as declaratory of the existing law," and in view of the fact that *Re Gower's Settlement* decided that the section did make some change in the existing law in relation to realty, it is legitimate to assume that the learned judge's omission to consider that case was based on the assumption that the application of the section differed according as the property involved was realty or personalty. But whatever the assumption on which the dictum is based the dictum itself can hardly be correct. One of the main objects of the Property Legislation of 1925 was the assimilation of the incidents of realty and personalty as far as possible so that it is unlikely that a section enacted for the first time by the Trustee Act of that year was intended to have a different effect in the case of personalty from that which *Re Gower's Settlement* decided it to have in the case of realty. Moreover, the section by its terms comprehends *any* property, so that if it was intended to change the existing law in relation to realty (as Clauson J. held), it could hardly have been intended to be merely declaratory of the existing law in relation to personalty (as Upjohn J. now suggests).

The word "application" (*u*) was clearly the cause of the learned judge's difficulty. He emphasised that the object of the scheme was to put an end to the trusts created by the settlement, and to give the infant an immediate absolute interest in a sum of cash in exchange for a future contingent interest and, in his view, such an exchange was not an application for her benefit.

On the other hand, in *Re Meux's Will Trusts* (*a*), Wynn-Parry J. was satisfied that where the purchase price to be paid by the tenant for life for the remainderman's reversionary interest was to be resettled on substantially the trusts of the original settlement, that was an "application" of the capital or income within the meaning of the section. In doing so he relied upon *Re Ropner's Settlement Trusts* (*b*), in which Harman J. held that a proposal

(*t*) *Ibid.*
(*u*) *Cf. Williams* v. *Papworth* [1900] A.C. 563, at p. 567 (P.C.).
(*a*) [1957] 3 W.L.R. 377.
(*b*) [1956] 1 W.L.R. 902.

to advance money to beneficiaries to be settled upon them was an "application" for their benefit within the meaning of section 32 of the Trustee Act, 1925, and, in Wynn-Parry J.'s view in the instant case, a similar meaning should be given to the word "application" in section 53 (*c*).

The distinction between the cases is manifest, but it will be regrettable if the word "application" in the section is ultimately held to be coterminous with the word "settlement." The crux of the matter is that in both cases the court's sanction was being sought to put an end to an existing settlement, and what was proposed was for the infant's benefit. Yet in one case, where there was to be a resettlement, jurisdiction was held to exist, while in the other, where there was to be an out-and-out payment, jurisdiction was held to be lacking.

The meaning of the words "capital or income thereof" in the section may be sought from the facts of *Re Heyworth's Contingent Reversionary Interest* itself. They could not refer to the income of the trust fund since it was not the infant but the grandmother who was beneficially entitled to that: nor yet to the trust fund itself, since no part of that could be applied for the infant's maintenance, education or benefit without the grandmother's consent, which might have been refused. If this is correct, the "capital or income" referred to must be found elsewhere. It cannot be found in the "capital or income" of the infant's beneficial interest in its present state, since neither capital nor income will be available until some steps are taken to realise the infant's interest. This leads, therefore, to the conclusion that the "capital or income" thereof must be that of the infant's beneficial interest after that interest has been dealt with by the court in accordance with the power conferred by the section.

It should be noted that *Re Gower's Settlement* justifies the conclusion that the section extends to the alteration of the beneficial interests of infants: before the order of the court in that case the infant was entitled to an estate tail in remainder free from incumbrances: after the order he was entitled to an estate in fee simple in remainder mortgaged to provide funds for his maintenance.

(*c*) In reaching his conclusion Wynn-Parry J. rejected the argument that two transactions were involved: (1) a sale of the remainderman's interest to the life tenant, and (2) a settlement of the proceeds of sale; and that only (1) was of benefit to the infant. This was a single transaction which he was not entitled to cut up in separate pieces.

Summary

I would suggest, therefore, the following tentative analysis (*d*): Where (a) an infant is beneficially entitled to any interest in property, whether real or personal;

(b) the interest itself is not under the settlement applicable for his maintenance, education or benefit, nor is it producing any income which is so applicable;

(c) a proposal is made that the court should authorise a "conveyance" of the infant's interest with a view to the application of the capital or income, arising out of such conveyance, for the maintenance, education or benefit of the infant;

then the court has jurisdiction to sanction the proposal upon such terms as it thinks fit. More particularly, the sale of an infant's contingent reversionary interest to the life tenant in order to minimise liability to estate duty is made with a view to, and is, an application of the proceeds of sale for the infant's benefit (*e*), if these amount to more than he would be likely to receive if no sale takes place, and if they are to be settled upon and not paid outright to him. It is to be hoped that this latter restriction will ultimately disappear.

(*d*) *Chapman* v. *Chapman* [1954] A.C. 429 does not preclude the suggested analysis, since neither s. 53 nor *Re Gower's Settlement* was considered by the House of Lords in that case.

(*e*) A word of the widest import: see *Re Vestey's Settlement* [1951] Ch. 209.

SMITH *v.* EAST ELLOE R.D.C. AND LEGAL LIABILITY IN RESPECT OF FRAUD

By John S. Hall, Barrister-at-Law

The Facts and Decision

The facts in *Smith* v. *East Elloe R.D.C.* (*a*) were as follows: On July 6, 1954, the appellant issued a writ against the East Elloe Rural District Council, the Ministry of Health and Mr. Pywell, the clerk to that council, claiming:

1. Against the East Elloe Rural District Council, *inter alia*, a declaration that a compulsory purchase order dated August 26, 1948, was made wrongfully and in bad faith.
2. Against the Ministry of Health a declaration that the said order was confirmed wrongfully and in bad faith and
3. Against Pywell a declaration that he knowingly acted wrongfully and in bad faith in procuring the said order and confirmation of the same and damages.

The Acquisition of Land (Authorisation Procedure) Act, 1946 (*b*), allows the validity of a compulsory purchase order to be challenged in the High Court on the ground that it is *ultra vires* within the six weeks' period therein specified, but subject thereto it cannot "... be questioned in any legal proceedings whatsoever." In view of the latter provision, Master Clayton had ordered that the writ of summons in the action and all subsequent proceedings be set aside and on appeal Havers J. in Chambers and the Court of Appeal had upheld this order. The House of Lords, by a majority, affirmed the decision in so far as it affected the council and the Ministry, and, again by a majority, were of the opinion, although this was *obiter*, that even within the six weeks' period the Act deprived the courts of jurisdiction to hear an allegation of bad faith against these defendants (*c*).

It can logically be argued that, if it cannot be alleged that

(*a*) [1956] A.C. 736.

(*b*) The relevant statutory provisions are contained in paras. 15 and 16 of Part IV of Sched. I to the Act.

(*c*) Lord Somervell of Harrow (at p. 771) said that "the division in law is clear and deep" between "an *ultra vires* act done bona fide and an act on the face of it regular but which will be held to be null and void if *mala fides* is discovered. ..." The exclusion of the jurisdiction of the courts in relation to the compulsory purchase order itself is dealt with more fully in (1956) 72 L.Q.R. 460–462; the writer's article in *The Solicitor*, August 1956, Vol. 23, No. 8, pp. 216–219; (1955) 19 *Conveyancer* 313; (1956) 20 *Conveyancer* 243.

a compulsory purchase order was made or confirmed in bad faith and if the order was in all other respects unimpeachable, proceedings cannot be taken against an individual for procuring such an order. The Court of Appeal did not consider in detail the position of the clerk, but the House of Lords unanimously severed the liability of the clerk from that of the council by holding that the action might proceed against the clerk for damages.

Liability for Fraud

It is submitted that this decision raises two issues of considerable importance: first, the nature of the remedy against the clerk: this may be of practical significance in view of the fact that, as a result of the decision, the personal remedy against the individual may be the only one available to a litigant who alleges bad faith in these circumstances; secondly, the extent to which a council is responsible for the defaults of its clerk.

The reasons for allowing the action to proceed against Pywell were stated in general terms. Viscount Simonds pointed out that the injustice of excluding the jurisdiction of the courts to inquire whether a compulsory purchase order is made in bad faith may not be so great as might appear, "For," he said, "the bad faith or fraud is that of individuals, and . . . even if the validity of the order cannot be questioned an aggrieved person may have a remedy in damages against those individuals (*d*)." The speeches of the other Lords present do not appear to add anything to the above statement.

The remedy against Pywell would appear, from the speeches of their Lordships, to be in the nature of fraud. Fraud is used in several contexts and the courts have refused to hamper themselves by defining its precise scope (*e*). The relevant meaning of the term in this case may be that given by Sir John Romilly M.R. in *Green* v. *Nixon* (*f*). "Judges may," he said, "differ as to what precisely constitutes fraud; . . . it implies a wilful act on the part of one whereby another is sought to be deprived by unjustifiable means of what he is entitled to." It is necessary to add that such acts must "involve a breach of legal or equitable duty (*g*)," and be injurious to another. The boundaries of fraud may be vague, but fraud as a common law concept and fraud as an equitable concept are to some extent distinct; and similarly

(*d*) [1956] A.C. 736, at p. 752.

(*e*) *Words and Phrases Judicially Defined*, Vol. 2, 344. Kerr on *Fraud and Mistake*, 7th ed., p. 1.

(*f*) (1858) 27 L.J.Ch. 819, at p. 821.

(*g*) Story, Eq.Jur. 187.

the remedy against the clerk personally may be either a common law or an equitable remedy, although it is not considered that the latter would be available in this case.

Common law fraud

Dealing first with the common law remedy against the clerk this would appear to be in respect of fraud at common law. "Wrongs of fraud," said Salmond, "are of two kinds, essentially distinct—first, the wrong of deceiving the plaintiff so that he causes harm to himself by his own mistaken act, and secondly, the wrong of deceiving other persons so that they, by their mistaken acts, cause harm to the plaintiff . . . the second has no recognised distinctive title, and . . . will be called the wrong of Injurious Falsehood (*h*)."

It is the second heading that is relevant in this case and the fundamental consideration is whether a sufficient legal or equitable duty is imposed by law on the defendant in favour of the plaintiff. In *Langridge* v. *Levy* (*i*) the defendant sold a gun to Langridge—"for the use of himself and his sons" and falsely and fraudulently warranted it to be a good, safe and secure gun. The gun, when in the hands of the purchaser's son, the plaintiff, burst and injured him. Parke B. pointed out that there was no privity of contract between the parties and considered that as the gun was not of itself dangerous, there was no general duty not to sell such a weapon. He said: ". . . the plaintiff on the faith of that warranty . . . directly or indirectly communicated [to him] . . . and believing it to be true . . . used the gun and sustained the damage." He quoted *Pasley* v. *Freeman* (*k*) as authority for the proposition that there is a legal duty not to tell a falsehood "with an intention that it should be acted upon by the party injured." In the latter case, Buller J. said: "If A by fraud cheat B out of £1,000, it makes no difference to B whether A, or any other person, pockets that £1,000 (*l*). In *Langridge* v. *Levy* (*m*) there is no suggestion that the mention of the sons or the communication of the representation to them had any effect upon the sale, and the rights of the vendor and purchaser would be ascertained as soon as the sale was completed. It may therefore be possible to

(*h*) Salmond on *Torts*, 11th ed., p. 687. Unfortunately the cases cited in support of this contention all refer to false statements which cause damage to a third party in respect of his trade, profession, etc., or misleading trade descriptions.

(*i*) (1837) 6 L.J.Ex. 137.

(*k*) (1789) 3 T.R. 51; 1 R.R. 634.

(*l*) Lord Kenyon said ((1789) 1 R.R., at p. 648): "And I find it laid down by the Lord Comyns that 'an action upon the case for a deceit lies when a man does any deceit to the damage of another.'"

(*m*) *Ante.*

adapt the dictum of Buller J. by saying: "If A by fraud induces B to deprive C of his property, it makes no difference to C whether A or B, or any other person, obtains his property." The judge said: "Fraud without damage, or damage without fraud, gives no cause of action; but where these two concur an action lies." It is submitted that the knowledge of A that his fraud must injure C imposes upon him a duty, the breach of which will give C a legal remedy. The above reasoning implies, however, that the intermediary does not exercise an independent judgment in the matter, because if he does exercise such judgment the fraud of the defendant may not have caused the damage to the plaintiff or the damage may be too remote.

It is arguable that the courts have shown an increasing reluctance to imply a *novus actus interveniens*, and that the principle of *Scott* v. *Shepherd* (*n*) has been extended far beyond the spontaneous evasion of an immediate danger by the intermediary. Thus, in *Attorney-General* v. *Corke* (*o*) the owner of land allowed it to be used as a caravan site, and the occupants of the caravans committed on adjoining land acts dangerous to health. It was held by Bennett J. that the owner of the land, as the original instigator of the mischief, was liable on the principle of *Rylands* v. *Fletcher* (*p*) for the damage thus caused to his neighbours by campers who must have exercised an independent judgment in the matter; and that this liability would exist whether or not the owner had provided adequate sanitary conveniences (*q*). More recently in *Cavanagh* v. *London Transport Executive* (*r*) the plaintiff's husband was seriously injured in an accident caused partly by the negligence of the driver of the defendants' omnibus. Some sixteen months later he committed suicide. Dealing with the suicide Devlin J. said that "it was clear that the act was premeditated," but he nevertheless held that the defendants were liable not only for the injury but also for the death of the husband. It is, therefore, suggested that it may be possible to contend that although a clerk has no authority himself to make a compulsory purchase order and although the council may have to exercise a certain discretion in the matter, this need not constitute a *novus actus interveniens* and break the chain of causation between the conduct of the clerk and the injury suffered by the victim of the order. The late Professor Winfield has suggested that if a man fraudulently gives

(*n*) (1773) 2 W.Bl. 892.
(*o*) [1933] Ch. 89; 102 L.T.Ch. 30.
(*p*) (1868) L.R. 3 H.L. 330.
(*q*) This case has not escaped criticism, but does not appear to have been overruled. (1933) 49 L.Q.R. 158–159.
(*r*) *The Times*, October 23, 1956.

information to the police that another has committed a felony, the constable who arrests the alleged offender does a lawful act if he reasonably suspects that he has committed the felony. Yet the fact that the constable's act was lawful will not, of itself, negative the liability of the tortfeasor for malicious prosecution.

The above considerations apply generally but there may be authority for the proposition that a senior officer of a local authority owes a direct duty to the burgesses. This authority may be derived from dicta in the cases referred to below, although these cases are concerned with equitable claims and obligations and it cannot be stated with certainty that the duty referred to therein applies at common law. It is considered, however, that it should do so.

Equitable fraud

Secondly, with regard to a possible equitable remedy against the clerk it must be stated that practically all the reported cases concerning the liability of local authorities and their servants, cases which, prima facie, would appear to be most relevant to the question under consideration, proceed in equity and the remedy sought is for breach of trust. The following cases are considered to be representative of the reasoning usually adopted by the courts in such cases. In *Attorney-General* v. *De Winton* (*s*) the treasurer of a borough was also a district manager of Lloyds Bank. The borough, having exhausted its statutory borrowing powers, arranged for overdraft facilities at the bank, which the court held to be an illegal method of raising money, and it was the custom of the treasurer to credit himself, for the bank, and debit the borough with interest at four-and-a-half per cent. on this overdraft. The Attorney-General, on the relation of a burgess of the borough, sought an injunction against the treasurer to restrain similar debits in the future. The treasurer contended that the action was misconceived; for the debits were made by order of the borough, he merely acted throughout as their servant, and the borough were necessary parties to the action. Farwell J. overruled this objection. "It has been settled" he said "at any rate since Lord Cottenham's decision in *Attorney-General* v. *Liverpool Corporation*; *Attorney-General* v. *Aspinall* (*t*), that property held for public purposes is held upon charitable trusts." Lord Cottenham in the latter case had said: "I cannot doubt but that a clear trust was created by this act, for the public, and therefore in the legal sense of the term, for charitable purposes, of all the property belonging

(*s*) [1906] 2 Ch. 106; 75 L.J.Ch. 612.
(*t*) (1837) 7 L.J.Ch. 51, at p. 59.

to the corporation." Farwell J. continued: "But the defendant is their treasurer, and knows that the moneys . . . are trust moneys, and he is clearly amenable to the jurisdiction of the court and cannot escape by pleading the wrongful orders of his employers . . . the treasurer is not a mere servant of the council; he owes a duty, and stands in a fiduciary relation, to the burgesses as a body."

There does not appear to be any case where a clerk of a council has been held to be liable, in similar circumstances, to a resident in his authority's area and there are clearly differences between *De Winton's* (*u*) case and the one under consideration. But it may be possible for a plaintiff to advance an argument by analogy against the clerk. If a local authority is a trustee of its property, of rates levied by virtue of statutory powers, may it not also hold discretionary powers, such as the power conferred upon it by the 1946 Act to make compulsory purchase orders, upon the same trusts? Where a discretionary power is given to trustees to do, or not to do, a particular thing, the court, although reluctant to interfere with it, will assume jurisdiction to prevent a dishonest exercise of such power. Lord St. Leonards in *The Duke of Portland* v. *Lady Mary Elizabeth Topham* (*a*) said: "My Lords, the rules on this subject are so well settled, that it is quite unnecessary to go through any authorities. A party having a power . . . must fairly and honestly execute it without having any ulterior object to be accomplished. He cannot carry into execution any indirect object or acquire any benefit for himself, directly or indirectly." This statement implies that a fraudulent exercise of a power by trustees would constitute a breach of trust and *Attorney-General* v. *The Corporation of Leicester* (*b*) is authority for the proposition that an agent knowingly assisting in a breach of trust is personally liable. A corporation permitted their town clerk improperly to receive and retain trust moneys and it was held that the corporation and the town clerk were liable for the breach of trust.

The difficulty with regard to proceeding in equity, on the lines of *De Winton's* case and most of the reported decisions concerning wrongful dealings with their property by corporations, is to overcome the exclusion of the court's jurisdiction. If the compulsory purchase order cannot be questioned in any legal proceedings it would appear to be impossible to allege that a breach of trust has been committed. In the words of Viscount Simonds: "It cannot be predicated of any order that it has been made in bad faith until it has been tested in legal proceedings and it is just

(*u*) *Ante.*
(*a*) (1864) 34 L.J.Ch. 113, at p. 119.
(*b*) (1844) 7 Beav. 176.

that test which paragraph sixteen bars." Vicarious liability has no application in equity. The loss must be a loss to the trust estate occasioned by a breach of trust. It would therefore appear to follow that if the courts are precluded from inquiring whether a breach of trust has been committed, they are precluded from holding either the council or the clerk liable for such breach.

Ground of liability

The remedy against the clerk would appear to be a common law remedy of the *Langridge* v. *Levy* (*c*) type, in which case the compulsory purchase order would merely be the background against which the fraud was committed. In the words of Lord Morton of Henryton the relief sought against Pywell "in no way calls in question the validity of the compulsory purchase order or of its confirmation. It is simply alleged, as against the clerk personally, that he knowingly acted wrongfully and in bad faith in procuring the order and the confirmation thereof" (*d*). Viscount Simonds' reference to "damages" in the passage quoted at the beginning of this article may imply a remedy at common law. Although it would appear that at common law the council are protected by statute from direct proceedings based upon bad faith, the clerk enjoys no such complete protection, presumably because he is much more remotely concerned with the order, having no authority himself to make it.

Liability of Council for Clerk's Tort

This leads to the second main issue raised by the decision; the extent to which the council is responsible for the defaults of its clerk. The council, it is submitted, can claim statutory protection against claims in equity and direct claims at common law. But if proceedings can be taken against the clerk for fraud, it would appear that the council may also be liable for the conduct of their employee. If such proceedings were taken there would appear to be three principal grounds of defence available to the council, none of which in the opinion of the writer would be successful.

First, it might be said that the council is protected by the provisions of the 1946 Act (*e*) referred to above. In so far as proceedings in equity are concerned it is submitted that this plea will be valid, but that this defence will not be successful in a common law action. That vicarious liability can exist in the case of fraud

(*c*) *Ante*.
(*d*) [1956] A.C. 736, at p. 753.
(*e*) The Acquisition of Land (Authorisation Procedure) Act, 1946, hereafter referred to as the 1946 Act.

was established by *Barwick* v. *The English Joint Stock Bank* (*f*). This was, in the words of Willes J.: "An action brought by Mr. Barwick against the Bank for an alleged fraud, which was described in the pleadings as being the fraud of the bank, but which he alleged to have been committed by the manager of the bank in the course of their business." It was submitted on behalf of the defendant bank that a principal is not answerable for the fraud of his agent. Dealing with this plea the judge said: "But with respect to the question whether a principal is answerable for the acts of his agent done in the course of his master's business . . . no sensible distinction can be drawn between the case of fraud and that of any other wrong. . . . If a man is answerable for the wrong of another, whether it be fraud or some other wrong, it may be described in pleading as the wrong of the person who is sought to be made answerable in the action." If, in the case in question, the relief sought against Pywell does not call in question the validity of the compulsory purchase order, it is submitted that neither does the vicarious liability of the council (*g*).

Secondly, if the council can establish that the clerk was not acting within the course of his employment they will not be liable. It is submitted, however, that although a certain degree of activity may be manifested by an intermediary, in this case the employer, without breaking the chain of causation, a much smaller degree of activity will make the employer vicariously liable for the acts of his servant. This is implied in the well known dictum of Parke B. in *Joel* v. *Morison* (*h*): ". . . but if he [the servant] was going on a frolic of his own, without being *at all* on his master's business, the master will not be liable." Applying this dictum to the case of fraud Sir Robert Collier, delivering the judgment of the Judicial Committee of the Privy Council in *Mackay* v. *Commercial Bank of New Brunswick* (*i*), said: "It is seldom possible to prove that the fraudulent act complained of was committed by the express authority of the principal, or that he gave his agent general authority to commit wrongs or frauds. Indeed it may be generally assumed that . . . frauds are beyond 'the scope of the agent's authority' in the narrowest sense. . . . But so narrow a sense would have the effect of enabling principals largely to avail themselves of the frauds of their agents . . . and would be opposed as much to justice as to authority. A wider construction has been put upon the words . . . at the same time it is not easy to define

(*f*) (1867) L.R. 2 Ex. 259; 36 L.J.Ex. 147, at p. 149.
(*g*) (1956) 72 L.Q.R. 522. Dr. Glanville Williams, *Vicarious Liability: Tort of the Master or of the Servant?* At p. 541 this problem is discussed.
(*h*) (1834) 6 C.P. 501; 40 R.R. 814.
(*i*) (1874) 43 L.J.P.C. 31, at p. 36.

with precision the extent to which this liability has been carried." He cited with approval the following definition of Willes J. in *Barwick* v. *The English Joint Stock Bank* (*k*): "In all these cases [of fraud] it may be said, as it was said here, that the master had not authorised the act. It is true he has not authorised the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which that agent has conducted himself in doing the business which it was the act of his master to place him in."

In the present case it was alleged that Pywell's wrongful acts were committed "in procuring the order and the confirmation thereof." It is clearly one of the duties of a clerk to assist his council in such matters, and the actual words used in the statement of claim would appear to suggest that the wrong complained of was the manner in which the clerk carried out duties which were within the scope of his employment.

Thirdly, it might be argued on behalf of the council that liability is excluded on the principle that a corporation cannot be liable in tort for an act of its agent which belongs to a class of acts *ultra vires* the corporate powers. *Poulton* v. *London and South Western Railway* (*l*) may be cited as authority for this proposition. In this case a stationmaster, being a servant of the defendants, without any authority from the defendants, gave the plaintiff into custody for refusing to pay for the carriage of his horse. Blackburn J. in the course of his judgment said: ". . . an act was done by the station master completely out of the scope of his authority, which there can be no possible ground for supposing the railway company authorised him to do. . . . Having no power themselves, they cannot give the station master any power, to do the act. Therefore the wrongful imprisonment is an act for which the plaintiff, if he has a remedy at all, has it against the station master personally, but not against the railway company." The proposition, however, is not entirely free from doubt in view of the decision in *Campbell* v. *Paddington Corporation* (*m*) where the corporation committed a public nuisance by erecting a stand across a highway as a result of which the plaintiff suffered loss. Lush J. was of the opinion that the principle of *Poulton's* case "has no application to a case where the corporation has resolved to do and has, in the only way in which it can do any act, actually done the thing which is unlawful and which causes the damage complained of." The extent to which, if at all, a corporation may be vicariously

(*k*) *Ante.*
(*l*) (1867) L.R. 2 Q.B. 534, at p. 540; 36 L.J.Q.B. 294.
(*m*) [1911] 1 K.B. 869, at p. 878; 80 L.J.K.B. 739.

liable for expressly authorising an *ultra vires* act is uncertain. Assuming, however, that it is generally true that a corporation cannot be vicariously liable for wrongs in respect of acts which it cannot in law commit, it may appear that similarly it cannot be vicariously liable for conduct the validity of which cannot be challenged by the courts.

It is submitted, however, that this reasoning is fallacious. In the first case a corporation is not liable because it has no existence when acting right outside the purposes for which it was incorporated while in the second case the exclusion of the court's jurisdiction rests upon the wording of an Act which should be narrowly construed. The words "a compulsory purchase order shall not be questioned" can hardly be deemed to confer, in respect of such orders, upon a council the status of a Stuart monarch who can do no wrong but whose ministers may be impeached. The fraud alleged would have to be proved without reference to the contents of the compulsory purchase order itself. Furthermore, the courts probably have no jurisdiction to quash such an order on the grounds of bad faith and certainly cannot do so after the six weeks' period specified in the Act has expired. Consequently the remedy of the plaintiff must be by way of damages.

Damage

It has been pointed out to the writer that it will be necessary for the plaintiff to prove that he has suffered damage over and above the amount of the compensation which he will have received in respect of the purchase (*n*). For instance, a tenant might be able to show that he had lost the protection of the Landlord and Tenant Act, 1954, and, under section 39 of that Act, he was precluded from receiving compensation for such loss; or a freeholder might be able to claim in respect of special loss not covered by the Acquisition of Land (Assessment of Compensation) Act, 1919.

In conclusion it is submitted that in the circumstances under consideration a council may be vicariously liable in respect of the fraud of a council employee and that at least the courts have jurisdiction to try such an issue.

(*n*) The writer wishes to acknowledge with thanks a most helpful letter from Ambrose Crawley, Esq., who called his attention to this requirement.

COMPANY CONTRACTS MADE BY PAROL

By A. H. Hudson, Barrister-at-Law

The recent case of *A. R. Wright & Son* v. *Romford Borough Council* [1956] 3 W.L.R. 896 has stimulated interest in the circumstances in which a corporation may or may not contract without seal. One of the most striking suggestions so far made in the course of exploring this topic is that the Companies Act, 1948, s. 32, which is the most practically important of the several exceptions to the general rule that corporations must contract under seal, has a more limited operation than is generally supposed.

In an article entitled " Contracts of Companies not under Seal " in the *Law Journal* for July 26, at p. 469, it was argued that, since section 32 (1) (b) of the Companies Act allows companies to make contracts in writing not under seal when a private person is by law required to make such a contract in writing and since section 32 (1) (c) allows companies to make contracts by parol where a private person could make a valid contract " by parol only, and not reduced into writing," the case of a contract which could be made by word of mouth on behalf of a company but in fact is put into writing is not covered by these provisions and must be made under seal unless it is covered by one of the common law exceptions. It was admitted in the article that it might be argued that, since oral contracts were covered, then *a fortiori* written contracts made when oral contracts would have sufficed would be covered. This was dismissed, however, because it was considered inconceivable that the layout of the subsection (differentiating between contracts under seal, those required to be in writing and those made by parol) would have been adopted had it been intended to say that " any contract other than one which between private parties would be required to be under seal may be made with the same formalities as between private parties on behalf of a company by an agent duly authorised." The article continued by suggesting that the great majority of company contracts really relied for their formal validity on *South of Ireland Colliery* v. *Waddle* (1869) L.R. 4 C.P. 617 or one of the other common law exceptions to the requirement of sealing and that here there existed a problem for the Law Revision Committee.

It is submitted, however, with respect, that the problem is much reduced if it is recalled that the word " parol " covers not

only contracts made by word of mouth but also by writing without seal. In *Rann* v. *Hughes* (1778) 7 T.R. 350n. Skynner L.C.B. said: "All contracts are by the laws of England distinguished into agreements by specialty and agreements by parol; nor is there any such third class as some of the counsel have endeavoured to maintain, as contracts in writing. If they be merely written and not specialties, they are parol, . . ." Lord Denman C.J. in *Gibson* v. *Kirk* (1841) 1 Q.B., at 856, is to the same effect. See also Chitty on *Contracts*, 21st ed., Vol. I, p. 6, and Anson on *Contract*, 20th ed., p. 65.

However, Halsbury's *Laws of England*, 3rd ed. (Simonds), Vol. 8, p. 86, says that the word "parol" is sometimes used—as it seems to be used in the *Law Journal* article—to distinguish oral from written contracts, but says that it is more properly used to distinguish simple contracts, whether written or oral, from contracts made by deed. Stroud's *Judicial Dictionary*, 3rd ed., p. 2093, goes further and says that "probably it may be said that when we now speak of anything being done 'by parol'—*e.g.*, the making a contract or the giving of evidence—we generally mean doing it orally, *i.e.*, by word of mouth only." No judicial approval is cited for this last proposition (which, since it is qualified by the word "generally" does not absolutely forbid a wider meaning) and *Rann* v. *Hughes* and *Gibson* v. *Kirk* are cited for the word "parol" including writing not under seal.

Thus, though there does seem to be a little uncertainty as to the meaning of the word, the great weight of authority seems very definitely to favour its including writing and if ever the validity of a contract depended upon this point in the construction of section 32 of the 1948 Act it is submitted that authority would be reinforced by the rule that ". . . the courts will not be astute to construe an Act so as to avoid a contract . . ." (Craies on *Statute Law*, 5th ed., p. 236), and by the rule that, where ambiguity exists, a statute will be so construed as to avoid inconvenience and injustice.

A further point which might be made in favour of the "limited view" of the operation of section 32 is that section 32 (1) (c) reads: "a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied." It might be suggested that the words "by parol only, and not reduced into writing" show that Parliament was here using "parol" as equivalent to "oral." The answer to this would seem to be that the words "and not reduced into writing" are merely descriptive of

the circumstances in which the private person could make the contract and the use of the word "only" after "parol" in that part of the paragraph where the words "and not reduced into writing" occur shows that in that part the word "parol" is being used in a more restricted sense than in the part of the paragraph which refers to the position of a company.

Section 97 of the Companies Clauses Consolidation Act, 1845 (which corresponds to section 32 of the 1948 Act), might seem to be more susceptible to the reasoning of the "limited operation" view. Like section 32, it is divided into paragraphs dealing separately with contracts under seal, in writing and by parol. The part of the section which corresponds to section 32 (1) (c) reads:

> "With respect to any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, such committee or the directors may make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same."

Here the repetition of the word "only" after "parol" together with words referring to the absence of writing, would seem to make it easier to argue that this section authorises only contracts made by word of mouth and conduct. Had it been desired to confine the operation of section 32 (1) (c) in the way that the "limited operation" view suggests, why was not the 1845 formula retained? In fact, as is here submitted, what changes have been made tell in the opposite direction by allowing the wider meaning to the word "parol" where it is used in enacting the company's position with regard to formalities. The words "and not in writing" would seem to make it clear that section 32 (1) (c) only refers to the category of contracts which are not required either to be made in writing or evidenced in writing when made by a private person. The effect appears to be that if a contract can be validly made orally by a private person then it may be validly made by parol, either written or oral, on behalf of a company.

Since section 32 (1) (c) thus excludes contracts which must be made in writing or evidenced in writing when made by a private person, these contracts which require writing all fall within section 32 (1) (b). These contracts seem to be much more numerous than the *Law Journal* article would appear to suggest. For a list see Halsbury's *Laws of England*, 3rd ed., Vol. 8, pp. 88–89. It could perhaps be argued that contracts within the Statute of Frauds, s. 4, and the Law of Property Act, 1925, s. 40, are strictly speaking covered by section 32 (1) (c). Since they are merely required to be evidenced in writing, therefore a private

person could make them validly " by parol only, and not reduced into writing " though, of course, in that condition they would be unenforceable. This brings them within the category covered by section 32 (1) (c), but, as has been argued above, it would be open to the company to use the form of parol which would confer enforceability upon the contract. This would leave section 32 (1) (b) to cover contracts which *stricto sensu* must be in writing, such as bills of exchange. One possible explanation of the layout of these sections is that the draftsman was endeavouring to ensure that the relaxation in respect of " pure parol " contracts, those which can be made orally by private persons, did not raise a doubt as to the possibility of companies being able to make oral contracts even when private persons would have to use writing. A comprehensive provision dealing with " parol " contracts might, by reason of the fact that " parol " covers both writing and speech, have raised this difficulty.

In conclusion it is submitted that though the drafting of section 32 may be uneconomical and inelegant it still does not leave uncovered the wide gap suggested by the " limited operation " contention which would seem to apply with greater force to section 97 of the Consolidation Act than to section 32 of the 1948 Act.

REGISTERED LAND CONVEYANCING

Practice Notes—Second Series

In continuation of the first set of Practice Notes arising out of meetings of the Joint Advisory Committee of The Law Society and H.M. Land Registry, which were published in Volume 18, p. 68, a second set has now been prepared and is given below. These are numbered consecutively with the first series.

Both series of Practice Notes are available as a single pamphlet from the Cashiers Department, Law Society's Hall, Chancery Lane, W.C.2, price 1s. 6d., including postage.

17. Sub-sales and Resales: Office Copies and Searches

When registered land is sold the evidence of his title which a vendor supplies to the purchaser is an abstract or copy of the entries in the register of his title. Usually, as recommended by the Council (see the *Law Society's Gazette* of March, 1957, at p. 149), instead of the vendor's solicitor himself preparing a copy of the entries in the register, he applies to the Land Registry for an office copy and hands this over to the purchaser together with an authority for the purchaser to inspect the vendor's registered title. Here again, the purchaser's solicitor does not usually make a search himself but applies to the Land Registry for a free official search of the register as from the date of the office copy of the register which is in his possession. The certificate of the result of this search will reveal whether or not any entries adverse to the vendor's title have been made in the register since the date when the office copy of the register was issued. Furthermore, the certificate of the result of the official search confers fourteen working days' priority for the transaction (sale, lease, mortgage) in respect of which the official search was made. If this machinery is used, purchasers, lessees and mortgagees of registered land can complete their purchases, etc., in complete safety without ever visiting the Land Registry.

It sometimes happens, particularly in the case of building estates, that the registered proprietor A sells part of his land to a purchaser B, who contracts to sell part of the land he has bought to C before the Land Registry has had time to complete the registration of his (B's) purchase. In such a case there will be no register in existence and it will not be possible to prove B's title by producing an office copy of the register showing him registered as proprietor of the land.

In such circumstances the sub-purchaser C may verify B's title by taking the following steps. He should first obtain from B the office copy of A's register (which B should already hold or which he is in a position to apply for). An *office copy* is essential for this purpose, not a plain copy. Then C can apply for an official search based on this office copy and the certificate of the result of this search will not only certify the state of the register so far as it exists, but will reveal the presence in the Registry of the transfer to B and state whether it is in order and whether or not is contains restrictive covenants or easements affecting C's land. And finally armed with this information C should ascertain from B the terms of the latter's transfer.

Immediately before completion C should make a second official search in order to secure the statutory priority of fourteen clear working days for the registration of his transfer. By the time he does so the registration of the transfer to B may have been completed, in which case the second search will be based on an office copy of the register of B's title. If, however, the registration of B's title is still uncompleted in the Registry the search should, as before, be based upon the office copy of the register of A's title.

In the case of a quick resale of the whole of the land in a title of which A is the registered proprietor, if C makes an official search before B's transfer is completed by registration he will be told by the Registry whether or not B's transfer is in order.

These remarks apply, *mutatis mutandis*, to a proposing chargee who is advancing money to a sub-purchaser.

Note: An application for an office copy of the register should be made in form A.44.

An application for an official search where the purchaser is buying the whole of the land in a title must be made in form 94A.

An application for an official search where he is buying part of the land in a title must be made in form 94B.

18. Benefit of Restrictive Covenants

It is never possible to state positively on the register that the land has the benefit of a restrictive covenant because, as a matter of general law, it is never possible to assert that the covenant will always remain enforceable. If, however, in a particular case a special request is made for the purpose, a note will be entered on the register that a transfer or a conveyance contains covenants which were expressed to be imposed for the benefit of the land in the title. No such note will be made on a vendor's title where there are numerous transfers of part imposing covenants.

19. Flats: Entry of Easements on Register

Where large houses are converted into flats, the Registry takes pains to ensure that complete particulars of the rights and easements granted and reserved on the sale of each flat are referred to on the registers of both the vendor's and purchaser's titles. These particulars are made available to interested persons in one or two ways according to circumstances. Either (i) they may be set out verbatim on the register, or (ii) they may be entered by reference to the documents creating them. In this case copies of the material documents are, wherever practicable, bound up in the respective land or charge certificates, but where this is not so the registers show clearly the title numbers under which the documents are filed. In complicated cases the Registry sometimes consults with the solicitors concerned in an endeavour to frame the entries in the register to meet their requirements. It is not practicable or desirable to bind up in the land certificate of a developing building estate copies of the transfers of part (which often run into hundreds) by which easements are granted and reserved.

20. Entry of Benefit and Burden of Easements

Where, at the time of first registration, any easement created by an instrument and appearing on the title adversely affects the land, the Chief Land Registrar must enter notice of it on the register as required by section 70 (2) of the Land Registration Act, 1925. Where an easement is created over registered land, section 19 (2) (or s. 22 (2), as the case may be) provides that the grant must be completed by registration in the same way as a transfer and that notice of it must also be entered on the register. Section 19 (1) (or s. 22 (1)) provides that in the case of a transfer of the registered estate the transferor shall be deemed to remain proprietor of the registered estate until the transferee is entered on the register as proprietor of the estate transferred.

Where a transfer containing an effectual grant of an easement is presented for registration the Chief Land Registrar as a matter of course will make the requisite entries. But where an easement is granted by a Deed of Grant (independently of any other transaction) the onus is upon the grantee to apply for registration of the benefit of the deed and, where requisite, the burden also. Thus, where the servient title is a registered one the grantee must, for his own protection, ensure that the servient owner lodges his land certificate at the Registry to enable the necessary entry to be made against his title. In making his own application the grantee should refer to the title numbers of both dominant and servient titles.

A purchaser of registered land takes subject only to what appears on the register and to overriding interests, and if the grantee of an easement over registered land has failed to apply for registration of the Deed of Grant, the grant will be ineffective against a subsequent purchaser of the servient tenement. It must never be forgotten that mere entry of notice on the register of the dominant title of a purported grant of an easement does not constitute registration thereof. In such a case the easement will not be an overriding interest under section 70 of the Land Registration Act, 1925, because, as it has not been completed by registration under section 19 (or section 22), it will not be a legal easement and will not therefore be " subsisting " for the purpose of subsection (1) of section 70.

Where a deed containing a grant or reservation of an easement is lodged in the Registry, entries are made of the benefit and of the burden of that easement when the titles to both dominant and servient tenements are registered and application is made against both. Where the servient tenement alone is registered the burden will be entered. Where only the dominant tenement is registered the benefit can be entered on the register of the dominant title, provided the title to the servient tenement is proved to the satisfaction of the Chief Land Registrar. If, however, the grantor does not prove his title to make the grant, the benefit of the easement cannot be registered with an absolute or good leasehold title. The most that can be done in such a case is to enter a note in the property register of the dominant title that a certain deed purported to grant the right in question. The Chief Land Registrar is prepared to make such entries as are justified by the evidence produced to him, even where the evidence of the title of the grantor is not fully deduced.

21. Entry of Indemnity and other Positive Covenants

A note is made in the proprietorship register of the existence of positive covenants and a copy of them is sewn up in the land or charge certificate, where they are created *after* the date of first registration. This may not have been made entirely clear in Practice Note 1. This procedure was adopted, not because the Chief Land Registrar is required by the Act or Rules to enter positive covenants on the register or to give notice of their existence but because he appreciates that when they are contained in a transfer or other deed which is filed in the Department, they tend to be overlooked, or their exact nature forgotten, with the result that a vendor's solicitor might omit to take an indemnity from the purchaser on a transfer of the land. The same difficulty does not arise, however, on first registration, where the original deeds are not filed in the Department, but are returned to the applicant. It would be

an immense task for the Registry to examine all documents of title lodged on first registration in order to ascertain the existence of any positive covenants, and such a task cannot be undertaken. A note is printed inside the cover of land certificates giving express warning of the need to inquire about the existence of positive covenants and when a first registered proprietor comes to sell, his solicitor is able to consult the actual deed containing the pre-registration positive covenants which will enable him to frame the requisite covenant for indemnity. On registration of the transfer a note of this covenant will be included in the certificate of title.

> **Note:** A first registered proprietor can be identified by the fact that the date on which he is registered as proprietor is the same as that given in the property register as the date of first registration of the land.

22. Dealing by Trustees of Friendly Society

On application for registration of dealings by the trustees of a friendly society the Land Registry requires to be satisfied in accordance with normal conveyancing practice that the persons executing the disposition are the trustees for the time being of the society. The kind of evidence required varies according to the circumstances. Thus, when the trustees have changed since the date of registration, a certificate by the secretary or solicitor of the society that the persons executing the disposition are the present duly appointed trustees of the society will always be accepted as sufficient evidence of their appointment. Again, where the persons executing a discharge of a registered charge are different persons from those named in the charge as being trustees of the society, and their signatures are witnessed by the secretary, that attestation will be regarded as sufficient evidence that the executing parties are the present duly appointed trustees of the society.

The same evidence will be accepted in the case of unincorporated building societies and industrial provident societies.

23. Cancellation of Notice of Contract for Sale

Where a contract for sale of registered land has been protected by notice on the register and the purchaser fails to complete, the notice cannot be cancelled on the mere application of the vendor. If the purchaser objects to the cancellation the matter may call for a judicial decision by the Chief Land Registrar or by the court. This was the view of the late Mr. J. M. Lightwood (see *Law Journal*, December 7, 1929, at page 364). Moreover, *Re Engall's*

Agreement (*a*) shows that the cancellation of the entry of an estate contract in pursuance of the provisions of the Land Charges Act, 1925, is not merely a procedural matter. Although the authorities quoted concern unregistered land the same principles apply to registered land, and it is immaterial in this connection whether the contract incorporates The Law Society's Conditions of Sale, the National Conditions of Sale, or any other conditions.

If the contract is protected by the entry of a caution instead of a notice the caution can be warned off at the instance of the vendor and, if the purchaser then objects, the issue can be judicially decided by the Chief Land Registrar.

24. Protection of Lessee where Lease not Overriding Interest—Registration and Assignment of Leases

[The following Practice Note is in substitution for Practice Note 10 set out in Volume 18, at page 18.]

(a) *Where the freehold or superior leasehold is registered (whether in the compulsory areas or not)*

A grant of a term of more than twenty-one years by the registered proprietor must be completed by registration if the grantee is to obtain a legal estate (ss. 20 and 23 of the Land Registration Act, 1925). It is emphasised that this refers to substantive registration of the lessee's term under section 19 (2) or 22 (2).

Notice of the grant should be entered against the freehold or superior leasehold title (s. 48) and the Land Certificate of the title of the freeholder or superior leaseholder should be produced. Notice may be entered without the concurrence of the registered proprietor and production of his Land Certificate where the lease is binding on him (proviso to s. 48 (2)).

(b) *Where the freehold or superior leasehold is not registered (compulsory areas only)*

(i) A grant of a term of forty years or more or an assignment on sale of leasehold land where the lease has not less than forty years to run at the date of the delivery of the assignment *must* be completed by registration within two months from the date of the grant or the assignment if the lessee or assignee is to obtain the legal estate (s. 123).

(ii) A grant of a term of more than twenty-one years but less than forty years, or an assignment of a term having less than forty years but more than twenty-one years unexpired, *may* be registered.

(*a*) [1953] 1 W.L.R. 969.

(c) *Position where lessee fails to register*

(i) As stated above, the lessee will not obtain the legal estate in the lease.

(ii) A lessee who has not protected himself in accordance with the foregoing provisions may nevertheless have an overriding interest under section 70 (1) (g) if in actual occupation of the land or in receipt of the rents and profits thereof.

(iii) If a lessee or assignee has failed to register in accordance with paragraph (b) (i) above, and application is made for the registration of the freehold or superior leasehold, the existence of the lease ought to be disclosed in the application, and, if it is, notice of it will be entered on the register automatically. If the grantee or assignee subsequently applies for registration, he will have no difficulty in obtaining an order under section 123, provided more than twenty-one years of his lease are unexpired (s. 8 (1) (a)).

(iv) If a head lessee fails to register in any case where registration is compulsory, he cannot confer a legal estate on a sub-lessee (*British Maritime Trust* v. *Upsons, Ltd.* (*b*)).

(d) *The following interests are incapable of registration:—*

(i) A lease with only twenty-one years (or less) to run at the time of application (s. 8 (1) (a)).

(ii) A lease originally granted for twenty-one years (or less) (s. 19 (2), proviso (a)).

(iii) A mortgage term where there is a subsisting right of redemption (s. 8 (1) and s. 19 (2), proviso (b)).

(iv) A lease containing an absolute prohibition against alienation *inter vivos* (s. 8 (2)).

(v) An agreement for a lease (s. 8 (1) (b)).

The interests referred to in items (i), (iv) and (v) should be protected on the register by notice, but such protection is not required in the case of the lease mentioned in (ii), if it was granted at a rent without taking a fine (s. 19 (2), proviso (a), and s. 70 (1) (k)).

25. Searches on behalf of Purchaser and Chargee

A suggestion has been made that the existing forms of application for an official search (forms 94A and 94B) should be amended so as to enable a solicitor acting for a purchaser and also for his chargee to make searches on behalf of both clients by using a single form. Where a person obtains a charge for the purpose of buying or taking a lease of registered property, an official search in form 94A or 94B made on behalf of the chargee has the effect of

(*b*) [1931] W.N. 7.

providing protection not only for him but also for the purchaser (or lessee), provided the charge is in order when lodged for registration. This is so because the registration of the charge is dependent upon the registration of the transfer (or lease) and therefore any application received for registration between the date of the issue of the certificate of the result of search and the date of registration of the charge (assuming it is lodged within the period of priority conferred by the search) is postponed to the registration of the charge and the associated transfer (or lease).

An amendment to forms 94A and 94B as suggested would create unnecessary complication without any corresponding benefit.

26. Adjudication of Stamp Duty

It sometimes happens that the stamp duty on a document which has to be presented for registration needs to be adjudicated. In view of the present delays in dealing with adjudication in the Stamp Office, the question arises how the requirement of adjudication can be reconciled with the need for immediate registration.

In the compulsory areas, if an application for first registration is necessary because there has been a conveyance on sale or other assurance of the kind which induces compulsory first registration under the provisions of section 123 of the Land Registration Act, 1925, the application must be made within two months of the date of the deed as the applicant will otherwise lose the legal estate. And in all areas, compulsory or non-compulsory, dealings with land of which the title is registered, which have been protected by an official search under the Land Registration Rules, 1930 and 1936, must be presented at the Registry within fourteen working days of the issue of the certificate of the result of the search if they are to enjoy the priority thereby conferred. However, the Registry cannot consider any application to register a document (whether on first registration or on a dealing), nor can it allow priority for a document *unless that actual document is lodged with the application.*

Rule 95 of the Land Registration Rules, 1925, provides fully for this situation. Under this rule, where a deed which is to be registered needs adjudication, it must, if priority for the application is to be preserved, first be sent to the Land Registry with the application to which it relates, together with a certified copy and a written request by the applicant's solicitor for the immediate return of the original coupled with an undertaking to return it to the Registry as soon as it has been adjudicated. If this is done, the application will be accepted by the Registry, who will return

the original document to the applicant and stand over his application until the adjudication has been completed. When the document is returned, the application to which it relates will be completed as of the date when it was originally lodged.

27. Registration with General Boundaries

Under Rule 278 of the Land Registration Rules, 1925, the filed plan or general map of a registered property is deemed to indicate its general boundaries only and the exact line of the boundary of the registered land is left undetermined—as, for instance, whether it includes a hedge or wall and ditch, or runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it.

Although the recent case of *Lee* v. *Barrey* (*c*) decides nothing new, the question has been asked whether, in the light of that decision, it is ever the duty of a solicitor acting for a subsequent purchaser to examine the plan on any previous transfer of part or the plan on the original conveyance leading to first registration. The answer is that it is never necessary for him to do so for the reasons which follow. Although under the general boundaries rule the ownership of boundaries is not guaranteed, the Registry portrays as accurately as possible on its maps the position of physical features including boundary fences, hedges and walls, and where none such exist reproduces the boundaries depicted on the conveyance or transfer plan with all available detail. Consequently, where the conveyance or transfer plan shows boundaries which do not agree with those actually existing on the ground, the Registry will consider the need for having either the deed plan or the boundaries altered so that the two correspond and thus give effect to the intentions of the parties. If the plan is altered (as will usually be the case) all parties concerned must sign a new plan or the altered plan under a statement that it correctly represents their intentions. This course is aimed at avoiding the trouble and expense of preparing a formal deed of rectification. Where, however, the deed plan is so badly drawn or so ambiguous that the Registry cannot decide whether or not it represents the fenced boundaries, the application will either be cancelled or the Registry will submit a draft filed plan for approval by all parties before completing the registration. Where there are no physical features defining the boundaries of the land the conveyance or transfer plan will always be treated as the governing factor and the existence of survey pegs which do not conform with the boundaries shown on the deed plan will be ignored by the Registry.

(*c*) [1957] 2 W.L.R. 245.

Unfortunately the Registry neglected to apply the principles indicated above to the transaction in *Lee* v. *Barrey*, but it is extremely improbable that the circumstances of that case will be repeated. Moreover, should actual monetary loss occur because the Registry makes a mistake in drawing its maps a claim for compensation would lie under the provisions of section 83 of the Land Registration Act, 1925, notwithstanding that the land was registered with general boundaries.

NOTES OF RECENT CASES

1. *REAL PROPERTY AND CONVEYANCING*

By F. R. Crane, ll.b., Solicitor

Re Ghey and Galton's Application [1957] 3 W.L.R. 562; [1957] 3 All E.R. 164 (C.A.)

Restrictive covenant—modification—extent of jurisdiction of Lands Tribunal—Law of Property Act, 1925, *s.* 84.—This was an appeal by way of case stated to the Court of Appeal (Lord Evershed M.R., Morris and Pearce L.JJ.) from a decision of the Lands Tribunal modifying restrictive covenants, imposed in 1908 and 1945 and limiting the use of Blunt House, Eastbourne, to that of a private dwelling-house; the Tribunal permitted "the Metal Box Co., Ltd. (the applicants), to use the said lands and premises as a convalescent home or rest home for their employees." As the Duke of Devonshire and trustees of the Chatsworth Settlements were admittedly entitled to the benefit of the covenants the application could not be made under section 84 (2) of the Law of Property Act, 1925, but was brought under section 84 (1) (a) and (c) *viz.*:—"(a) that by reason of changes in the character of the property or in the neighbourhood . . . the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons or . . . (c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction." The Chatsworth Estates had already given a licence to use Blunt House as a girls' school under extremely stringent conditions, and were now willing to give a licence for conversion to flats. The Lands Tribunal declined to "undermine" the scheme of development but, regarding the proposed use as preferable to conversion to flats and the objections as caused by fear of creating a precedent, made the order, personal to the applicants, quoted above.

In the Court of Appeal the Master of the Rolls (with whom the other members of the court concurred), after referring to *Re Henderson's Conveyance* [1940] Ch. 835 and *Re Truman Hanbury Buxton & Co.'s Application* [1956] 1 Q.B. 261 (noted *ante,* Vol. 20, p. 63) emphasised that an applicant must do "something far more than to show that to an impartial planner the applicant's proposal might be called as such a good and reasonable thing; he must affirmatively prove that one or other of the grounds for the jurisdiction has been established; and, unless that is so, the person who has the proprietary right, as covenantee, of controlling the development of the property as he desires and protecting his own proprietary interest, is entitled to continue to enjoy that proprietary right" ([1957] 3 W.L.R. at p. 569; [1957] 3 All E.R. at p. 168). Even then the Tribunal has a discretion —*Driscoll* v. *Church Commissioners for England* [1957] 1 Q.B. 330.

In the present case, however, none of the necessary facts had been found, because the Tribunal had been prepared to grant only a limited personal privilege. The court held that such an order, and also certain statements to the effect that future similar applications would be refused, were outside the Tribunal's jurisdiction. Consequently the appeal was allowed. The court also refused to send the case back to the Tribunal under R.S.C., Ord. 58B.

The decision is therefore a useful review of the principles relevant to applications of this kind. It may be remarked that emphasis was laid on section 84 (1) (a) rather than section 84 (1) (c), though in Newsom on *The Discharge and Modification of Restrictive Covenants* the latter paragraph is said to offer more chances of success (pp. xxii, xxv, xxxvi). The learned author also points out at p. xlviii that the Tribunal has held itself unable to make orders limited as to time; now orders limited as to persons cannot be made either.

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2. *WILLS*

By A. KIRALFY, Barrister-at-Law

Re Taylor, Lloyds Bank, Ltd. v. *Jones* [1957] 1 W.L.R. 1043; [1957] 3 All E.R. 56

Will—construction—gift vested subject to divesting—acceleration. —This decision follows hard on the decision in *Re Davies* [1957] 1 W.L.R. 922 but Upjohn J. was able to distinguish it. The facts were rather special. A testatrix left her residuary estate on trust for X and Y or such of them as should survive the testatrix and T. T took a prior life interest under the provisions in the will. There was an express defeasance of the gifts to X and Y if either or both died before the survivor of testatrix and T, leaving issue. The initial contingency of survivorship was construed by the learned judge as superseded by a vested interest subject to divesting, thanks to the added clause of defeasance, so that X or Y could keep their gift if they died before the survivor of testatrix and T but without issue. Some emphasis was also laid on the use of the word "or," so that if neither survived the appropriate date the first, absolute, part of the limitation would presumably operate. In fact T disclaimed his life interest so that it could not yet be known whether X or Y would survive him.

Although a disclaimer may alter the destination of beneficial interests by bringing forward a date of distribution, it will not do so if it would contradict the will. In this case the will expressly postponed the decision as the fate of the gift over until T died, which had not yet happened. As a result there was an acceleration of the gift to X and Y, on general principles of vested gifts over, but such gift remained charged with the clause of defeasance, in favour of their issue. *Re Conyngham* [1921] 1 Ch. 491 (C.A.) was closely in point. The result is good, but one cannot help feeling that a more detailed provision by the draftsman could have avoided such litigation.

(Theobald 482, 679–680)

Pigney v. *Pointers Transport Services, Ltd.* [1957] 2 All E.R. 807

Dependant's claim under statute not asset of estate of deceased.—A personal representative may not enforce a claim of the deceased if it conflicts with public policy. In *Beresford* v. *Royal Insurance Co.* [1938] A.C. 586 a life policy could not be enforced where the assured committed felonious suicide. In the instant case the deceased had committed felonious suicide as a result of the defendants' tort. His estate, as such, must not benefit, but an independent statutory claim of his widow, as dependant and not in her other character of administratrix, was upheld. The sums to be recovered by her under the Fatal Accidents legislation would not form part of the deceased's estate, although, thanks to the modern intestacy law, the tort damages would no doubt belong to the widow who also takes the intestate's estate as successor. The point is rather fine, but is justified by express references in the Act of 1846 to the right to claim even if the death was "felonious." No doubt the legislature were thinking of some felonious attack by a defendant on the deceased, not of a felonious suicide by the deceased induced by the defendants' non-criminal negligence, but the wording of the Act is so wide that it seems difficult to give it this restrictive interpretation. In all an interesting example of legal technicality, but this time resulting in substantial justice.

(Williams on *Executors* 350)

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3. *LANDLORD AND TENANT CASES*

By D. Macintyre, m.a., Barrister-at-Law

Collier v. *Stoneman* [1957] 1 W.L.R. 1108; [1957] 3 All E.R. 20 (C.A.)

Edmunds v. *Jones* [1957] 1 W.L.R. 1118n.

Rent Acts—"tenant"—"residing with the tenant at the time of his death"—Act of 1920, *s.* 12 (1) (g).—The decision in both these cases turned upon the true construction of the words "residing with" in section 12 (1) (g) of the Rent and Mortgage Interest (Restrictions) Act, 1920. In *Collier* v. *Stoneman* the tenant of two rooms and a kitchen had, for several years before her death, allowed her granddaughter to live in the back room of the premises, together with the granddaughter's husband and child, whilst retaining the front room for herself. The furniture in the back room belonged to the granddaughter, who made a substantial contribution to the rent of the whole premises, although she had no separate rent-book. The granddaughter also made separate housekeeping arrangements and, for the most part, she and her own family had separate meals. But the kitchen was shared. Upon these facts the county court judge held that the granddaughter, though not a sub-tenant, was residing with her husband in a separate matrimonial home, which did not include the tenant's room;

but the Court of Appeal reversed his decision. In the view of Jenkins L.J. (with whom Romer and Sellers L.JJ. agreed) the words " residing with " [a tenant] " at the time of his death " must be given their ordinary popular significance. He quoted with approval a passage from the judgment of Lord Evershed M.R. in the case of *Edmunds* v. *Jones* (decided in 1952 and now reported at [1957] 1 W.L.R. 1118n.) to the effect that what is contemplated by section 12 (1) (g) is " the case of a dependent child, or whoever it may be, being one of the household of the predecessor *quoad* the particular house ": and he held that " a member of a tenant's family living in the tenant's house otherwise than as a sub-tenant answers that general description." In *Edmunds* v. *Jones* the claimant was found to have been a subtenant of two rooms in a house, of which her mother was tenant, with no other rights in the house apart from a right to share the kitchen. She, it was held, had not been " residing with " her mother within the meaning of section 12 (1) (g).

Griffith v. *Pelton* [1957] 3 W.L.R. 522; [1957] 3 All E.R. 75 (C.A.)

Option to purchase—assignment of lease—subsequent assignment of benefit of option to assignee of lease—whether benefit of option transferred.—The Court of Appeal held in this case (applying certain dicta in *Re Adams and Kensington Vestry* (1883) 24 Ch.D. 199; (1884) 27 Ch.D. 394 and *Batchelor* v. *Murphy* [1925] Ch. 220; [1926] A.C. 63, and distinguishing *Woodall* v. *Clifton* [1905] 2 Ch. 257) that the benefit of an option to purchase contained in a lease, although the option is collateral to the lease, may in certain circumstances pass automatically on an assignment of the lease to an assignee of the original tenant.

A lease for twenty-one years expiring on March 25, 1956, contained a proviso to the effect that the lessee should have an option to purchase the fee simple of the demised premises upon giving six months' notice in writing, and it was also provided that the option should not be exercised during the lifetime of the lessor, but should be exercised within one year after the lessor's death, if the lessor should die during the term. The expression " lessee " was defined in the lease as including " executors, administrators and assigns " of the lessee, where the context so admitted. In August, 1948, the original lessee assigned the lease to the plaintiff without making any express reference to the option. On March 2, 1956, the lessor died. On March 22, 1956, the lessee assigned or purported to assign the benefit of the option to the plaintiff, if and in so far as it was not already vested in the plaintiff; and on the same day the plaintiff gave to the defendant, the executrix of the lessor, (1) notice of the assignment of the option and (2) notice in writing exercising the option. Upon these facts the Court of Appeal held that benefit of the option had been vested in the plaintiff by the original deed of assignment in 1948. An option to purchase, it was observed, whether contained in a lease or not, is a chose in action, the benefit of which can, as a matter of contract, be assigned by the grantee to anyone he chooses, unless, of course, the terms of the option show that it is intended to be personal to the

original grantee. An option to purchase contained in a lease can, therefore, be assigned, as a matter of contract, to an assignee of the lease; and upon the true construction of this lease, including in particular the definition of " lessee " continued in the lease, the original parties must have intended not only (1) that the option should be exercisable by any assignee of the lease to whom the lessee might assign the benefit of the option, and also (2) that a mere assignment of the term should operate as an assignment of the option. The benefit of the option had, therefore, as a matter of contract vested in the plaintiff, who could enforce it, again as a matter of contract, against the defendant, who, as executrix of the original lessor, was bound by his contract.

The burden of an option to purchase cannot, however, as a matter of contract, run with the land so as to bind assignees of the reversion. Upon that ground *Woodall* v. *Clifton*, where the defendant was an assignee of the reversion, was distinguished. An option to purchase can be enforced as a contingent interest in the land against assignees of the reversion, provided that (a) it does not infringe the rule against perpetuities and (b) all necessary precautions with regard to registration are taken; but it cannot bind such assignees as a matter of contract. The defendant in the present case, however, was not an assignee of the reversion.

Alternatively the court held that if the option was not assigned in 1948, it remained vested in the original lessee who effectively assigned it in March, 1956. The argument of counsel for the defendant to the effect that the option, if not assigned in 1948, would have been destroyed and therefore incapable of assignment thereafter, was rejected.

Tennant v. *London County Council* (1957) 121 J.P. 428

Landlord and Tenant Act, 1954—*notice to terminate tenancy of business premises—signature of notice—waiver.*—In January, 1956, the London County Council served a notice to terminate a tenancy of business premises under section 25 (1) of the Landlord and Tenant Act, 1954. The notice was in the form prescribed by the Landlord and Tenant (Notices) Regulations, 1954 (S.I. 1954, No. 1107): and it was signed, in the space in the prescribed form designed for signature by somebody designated by the form as the landlord, " J. E. J. Toole pp. R. H. D." J. E. J. Toole, a valuer of the Council, had been authorised in writing by the Council to sign notices. " R. H. D.," an assistant of J. E. J. Toole, had been authorised by J. E. J. Toole to sign notices on his behalf. In an affidavit sworn in November, 1956, in support of an application by originating summons for a new lease the tenant (for the first time) challenged the validity of the notice on the ground that it had not been signed by an " officer of the authority authorised by the authority to sign documents of the particular kind " as required by the London Government Act, 1939, s. 184 (1). The Court of Appeal held that there is nothing either in the Act of 1954 or in the form prescribed by the Regulations to displace the common law rule that a signature duly authorised by a person affixed to a

document by another person is the signature of the person giving the authority. A notice under section 25 (1) can, therefore, be signed by the landlord personally, or by his duly authorised agent, or by the fixing of the landlord's name to the notice by someone writing the landlord's signature for him with due authority *per procurationem*. Nor is there anything in section 184 (1) of the London Government Act to prevent the Council from signing documents in a way other than those for which that Act provides.

The court also held that, even if the notice had been defective, the tenant upon the facts of this case had waived his right to object to it. It is most desirable, in the view of Jenkins L.J., in cases under the Landlord and Tenant Act, 1954, that "parties who wish to take objection to the form or the validity of the proceedings should act promptly and should not reserve objections of this sort until the proceedings have been on foot for a matter perhaps of months."

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4. *REVENUE CASES*

By David R. Stanford, m.a., ll.b., Barrister-at-Law

(*Note*:—Where a case is not reported in any of the general series of law reports it is cited from *Taxation Reports* (T.R.).)

Sun Life Assurance Society v. *Davidson (Inspector of Taxes)* [1957] 3 W.L.R. 362; [1957] 2 All E.R. 760; [1957] T.R. 171 (H.L.)

Income tax—expenses of management—life assurance society

Statutory provisions: Income Tax Act, 1918, s. 33 (now Income Tax Act, 1952, s. 425).

Point: Harman J. (noted Vol. 20, p. 250) and the Court of Appeal both rejected the claim of the life assurance society to include stamp duty and brokerage incurred on change of investments as "expenses of management," holding themselves bound by previous authority so to do. The House of Lords has now confirmed that decision, not being similarly bound, being unanimously of the opinion that stamp duty is part of the cost of the acquisition of investments, an expense of the purchase not of the management. Brokerage, likewise, was held not to be an expense of management but in this case Lord Reid would have allowed relief by holding brokerage to be a "commission" and hence included within the claim under the Income Tax Act, 1952, s. 425, which permits a life assurance society and certain investment companies to reclaim tax "equal to the amount of tax on any sum disbursed as expenses of management (including commissions)."

The case is of general interest in view of the light cast upon the general construction of section 425 and the affirmation of certain general principles. The previous practice of the Revenue, although of long standing, could not assist the taxpayer when such practice was

changed: the Revenue being human does err sometimes and they as well as the taxpayer may prove that fact. The company's practice in treating an expense in certain ways cannot alter its legal nature so far as tax is concerned. Section 425 is not, however, restricted to the expenses involved in taking managerial decisions, a construction sought by the Crown, and the words should be given a wide construction. Nevertheless some force must be given to the words "of management" following "expenses" for they qualify and limit the claim to something less than general expenses. The general implication of the judgments, four separate judgments having been delivered, seems to be that all expenses incurred within the company in order that the company may carry on its business fall within expenses of management, but expenses incident to external dealings only fall outside the scope of that phrase.

Samuel Dracup & Sons, Ltd. v. *Dakin* [1957] T.R. 169 (Ch.D.)

Income tax—premiums for pensions for directors—expense of trade

Statutory provisions: Income Tax Act, 1952, s. 137 (a).

Point: No sum can be deducted in computing the profit of a trade under Case I of Schedule D unless it is wholly and exclusively laid out and expended for the purpose of the trade. This is the positive significance of the negative words appearing in the Income Tax Act, 1952, s. 137 (a). Pensions to employees and expenses incurred in connection therewith are normally brought within this category in the same way as they are justified as being payments within the company's power, namely, by showing that pensions are an inducement to both the employees concerned and to other employees to render good service and to remain with the company. In other words pensions paid or premiums paid for future pensions are only a justifiable deduction in the company's accounts if those payments were made for the benefit of the company and only incidentally benefited the employee. If the sole object of payment is to benefit the employee or his dependant and this has no correlative result in benefiting the company the payment is an act of bounty and not an expense incurred in running the trade.

Facts and decisions: A company, whose issued share capital was owned equally by two persons who were permanent directors of the company, had a pension scheme based on insurance policies for its employees. This scheme was extended in 1953 to the two permanent directors, the sole shareholders, and endowment policies taken out for this purpose, the premium thereon being £817 per annum. It was accepted that the directors were good at their jobs and thus, presumably, their services were of value to the company. No evidence was given, however, that the directors might have left the company, or had threatened to leave if pensions were not provided. It appeared from the evidence that the directors realised the benefit they could obtain by causing the company which they controlled to provide policies for their benefit at no cost to themselves.

The Revenue contended that at all material times the directors controlled the company and that the £817 premium was not deductible from the profits of the company prior to taxation, which contention was upheld by the General Commissioners.

Held: that there was evidence upon which the Commissioners could so find. Harman J. thought that the General Commissioners were amply entitled to take the view that it might be said of the directors: "You were laying out this money for your own advantage and not for that of the company, or, at any rate, your own advantage came into it."

This decision brings into the limelight one of the dangers affecting the family company on arranging pensions for the senior shareholders and their dependants. It is suggested that the payment of premiums for pensions or the pensions themselves could be justified if the arrangements therefor were made at the same time as and as part of the service agreement, which would tie the pension or premium more closely to remuneration and render it essential for the remuneration as a whole to be labelled "excessive" before a disallowance could be made.

C. I. R. v. *Saunders* [1957] 3 W.L.R. 474; [1957] T.R. 223 (H.L.)

Surtax—power to determine settlement

Statutory provision: Finance Act, 1938, s. 38 (2) (now Income Tax Act, 1952, s. 404 (2)).

Point: The House of Lords by a bare majority has now upheld the unanimous decision of the Court of Appeal (noted Vol. 20, p. 418) reversing the decision of Wynn-Parry J. (noted Vol. 19, p. 403), thus finally deciding that the conveyancing artifice of excluding from a power of appointment over the settled funds the small sum of £100 is sufficient to escape the taxation of the settlor under the Income Tax Act, 1952, s. 404 (2). Only Lord Cohen, however, agreed with the Court of Appeal in holding that a "provision" of the settlement meant a clause or term of the settlement rather than the benefit provided thereunder, the general opinion in so far as the point was relevant being in the opposite sense. On the assumption therefore that "provision" refers to the benefit provided, had any person power "to revoke or otherwise determine the settlement or any provision thereof" within the terms of the statute?

No one attempted to contend that determination meant anything other than bringing to an end, and did not cover mere diminution of the fund. Clearly, therefore, if, as was finally held, the whole fund had to be considered as the provision, the fact that the exercise of the power could not wholly exhaust the fund rendered it other than a power to determine. Argument was, however, put on the basis that the appointment of part determined the power as to the whole (less £100) and brought in a new power as to the remainder (less £100). No one had power to make new provisions from time to time and hence this argument was rejected. A further argument was that there was a separate provision for each £1 of the trust fund. Superficially

attractive this argument foundered when increase in value of the trust fund was considered, for the additional pounds thus forming part of the fund came under the power but no fresh provision was thereby made.

The one rule which emerges from this case appears to be that " determination " does not include " partial determination." Complete determination of the interest of a particular beneficiary may, however, bring section 404 (2) into operation although such interest only extended to part of the fund. Condition (a) of section 404 (2) must be satisfied before condition (b) comes into operation, and the reference in the latter clause to part of the property limits the charge to the part of the property in which the settlor, his or her wife or husband becomes or may become interested. If no determination has taken place or can take place then benefit to the settlor is not relevant for the purposes of this section. The provisions of sections 399, 405 and 415 of the Income Tax Act, 1952, should not, however, be forgotten.

Re Stratton's Disclaimer, Stratton v. *C. I. R.*
[1957] 3 W.L.R. 199 (C.A.)

Estate duty—gift within five years of death—disclaimer

Statutory provisions: Finance Act, 1940, s. 45 (2); Finance Act, 1894, s. 2 (1) (c).

Point: The Court of Appeal unanimously upheld the decision of Danckwerts J. (noted Vol. 21, p. 82) charging to estate duty on the death of the widow, as property taken on a gift, certain property specifically devised to a testator's widow which she disclaimed within five years of her own death. The disclaimer, made without any expressed intention other than renunciation of benefit, caused the property to fall into residue which had been given to the three sons. Section 45 (2) of the Finance Act, 1940, extended the liability to duty on gifts *inter vivos* to cover cases of gifts by way of creation of burden or reliance of right. To bring the present transaction within the section it was necessary to show (i) that the widow had a " right "; (ii) that the disclaimer " extinguished " that right; (iii) that such extinguishment was " at the expense of " the widow; and (iv) the extinguishment was " for " the " benefit " of the sons.

The court had little difficulty in answering the first three propositions in the affirmative. " A disclaiming legatee or devisee has between the testator's death and the moment of disclaimer a right in respect of the legacy or devise, in that he is, during that period, entitled to call upon the executors to pay or transfer to him the subject-matter of the bequest or devise in due course of administration " (*per* Jenkins L.J. at 3 W.L.R., p. 207). " Right " is a word of the widest import and there is no limitation to its meaning in section 45 (2), and the inchoate right of the disclaiming legatee prior to disclaimer is such a right. That being so the disclaimer undoubtedly extinguished that right, and, it being held that " at the expense " of a person does not imply the

actual handing out of assets in hand, such extinguishment was clearly at the widow's expense.

The fourth proposition, that the extinguishment was for the benefit of the three sons was again assented to unanimously by the court but on wider grounds than had been the case at first instance. The learned judge was of the opinion that a conscious intention to benefit the persons who in fact benefited was necessary in order to satisfy the section, but that such would be presumed in the absence of evidence to the contrary. The Court of Appeal decisively rejected any conscious intention as a necessary element, holding that the motive or purpose of the deceased was irrelevant provided that the transaction was gratuitous and benefit resulted. Thus the relaxation from this wide section which appeared at first instance (see Vol. 21, p. 83) has now proved illusory. Nevertheless, it was indicated by Jenkins L.J. that it may yet be arguable with success that the refusal of a proffered gift as against a legacy may not bring the section into operation, nor may the deliberate failure to satisfy the condition annexed to a conditional gift. Whilst the latter may be seen to be the "failure of an abortive gift" rather than the extinguishment of a right, it was this ground that was given as excluding the former. It is thought that the refused *inter vivos* gift is more easily distinguished from the legacy by the lack of benefit arising in the donor who, by hypothesis, still has it in his power to revoke the offer prior to acceptance.

Leave to appeal to the House of Lords was granted.

CORRESPONDENCE

To the Editor,

The Conveyancer and Property Lawyer

Mortgagee's Right to Possession

Dear Sir,

I have followed with interest Professor Crane's remarks on the cases of *Robertson* v. *Cilia* [1956] 1 W.L.R. 1502, and later on *Fourmaids, Ltd.* v. *Dudley Marshall (Properties), Ltd.* [1957] 2 All E.R. 35. He suggests that the inability of the courts to give any assistance even in cases of hardship to a mortgagor against whom possession is claimed by the mortgagee is unsatisfactory. But in the cases mentioned there had at least been some default, however slight, in compliance with the mortgage deed. What is worse is that the court cannot help a mortgagor even when there has been no default (see Harman J. in *Fourmaids* case, at p. 36) unless the mortgagee has expressly or impliedly excluded his right to go into possession. Later in his judgment (p. 37) Harman J. instanced the typical building society instalment mortgage as a case where a mortgagee has precluded himself from going into possession while there is no default. He says (*ibid.*) "The whole purpose of building societies is to maintain the householder in possession of his house so long as he pays the instalments."

Yet some building societies find it necessary to insert in their deeds a right to recall the outstanding balance upon notice and to go into possession even though there has been no default. One can imagine great hardship being caused by the exercise of this power to a borrower who thought he was safe while he paid his instalments punctually. And as the law stands the court whatever its sympathies could not assist him.

Other building societies, including some of the largest, do not have this power. They are content with a deed of the type described by Harman J. Should not a solicitor when advising a client seeking a mortgage advance suggest that he apply to one of these societies? At least the borrower will be protected while he complies with his mortgage deed.

Yours faithfully,
Donald Keating.

London, August 16, 1957.

To the Editor,

The Conveyancer & Property Lawyer.

Cheques Act, 1957

Dear Sir,

Some of your readers may have been misled as to the collecting banker's position under the Cheques Act, 1957, by the note which appeared at page 345.

The collecting bank "is not to be treated as having been negligent by reason only of its failure to concern itself with the absence of, or irregularity in, indorsement of the cheque." This statement in the note is true, and indeed so is the statement that "on the face of it, it does not matter whether the cheque is collected for the payee or not." But it is difficult to see why sections 2 and 4 are treated in isolation. Section 6 (2) states that "the foregoing provisions of this Act do not make negotiable any instrument which, apart from them, is not negotiable." When sections 2 and 4 are considered together with section 6 (2) it becomes clear that it does indeed matter whether the cheque is collected for the payee or not. In the example of the note a cheque is drawn in favour of A or order and paid in by B: in such circumstances it is correct to say that B's banker is not concerned merely because the cheque is unindorsed or irregularly indorsed by B, nevertheless B's banker is concerned that the cheque is properly indorsed by A to the order of B. Bankers will indeed be chary of accepting any unindorsed cheque for collection except on behalf of the payee, because to do so would be to treat as negotiated an instrument which apart from the Cheques Act, 1957, could not have been properly negotiated, and therefore in view of section 6 (2) is not properly negotiated.

Yours faithfully,
Brian Rudd.

Washington, Co. Durham,
October 9, 1957.

[There appears to be considerable difference of opinion on the point. The position before the coming into force of the 1957 Act was that a collecting bank was protected if it received payment for a customer of a crossed cheque in good faith and without negligence: the cheque had to appear to be properly indorsed, but if the indorsement was forged the bank was protected. The 1957 Act extends the protection to uncrossed cheques and, it is submitted, cheques which are not indorsed at all. Section 6 (2) does not in our view affect the position. The unindorsed cheque is not negotiable, but the banks, and the banks only, cannot be sued in conversion. B can still be sued, though perhaps innocent, but not his bank. It is, however, true that apparently at present banks do insist on indorsement if the cheque is not being paid into the customer's account.—Ed.]

THE LIBRARY

The Law and Practice relating to the Contract for Sale of Land and the Title to Land. 2nd ed. By W. J. Williams, B.A., Barrister-at-Law. Butterworth & Co. (Publishers) Ltd. clxiii, 832 and (index) 39 pp. (£4 15s.)

It is probably impracticable to produce in one volume an entirely comprehensive work both on contract and on title which will answer all the questions reasonably likely to arise in ordinary conveyancing practice, and an author has to select and arrange. In doing so he knows that he cannot satisfy everyone. The author's method is in general to keep the text terse—no doubt, he let himself go with the title—and to cram as much detail as possible into the footnotes. He has not got all the cases there, but he has certainly not skimped on this score. He is well aware that the 1926 law is receding rapidly into the background in practice, if not in theory. It is quite right to deal with registered land, but unfortunately it still remains the Cinderella branch of practice and only twenty-four pages are allotted to it. The real square peg is planning and, if the author errs in being rather short, he is to be preferred to the enthusiasts who would treat the rest of conveyancing as subsidiary to it. The truth is that, in conveyancing, planning hardly enters into the picture if the purchaser proposes to continue to use the premises as they have been used previously: he is then really only concerned to satisfy himself that they have been so used for four years and that it is not intended to acquire them compulsorily or pull them down in the foreseeable future. If the purchaser proposes to develop the land he will either get planning permission before entering into the contract or make it dependent on getting permission. Incidentally, there is no need to search the register of planning applications (p. 126) as these are picked up on the additional inquiries. It may be doubted whether, space being so valuable, it is wise to include a chapter on estate agents' commission and the sections on intestacy, legitimation and adoption.

The arrangement of the book is far from ideal and the author is not helped by the lack of differentiation in type between heads, sub-heads and so on. Title for the most part is dealt with under the head of "capacity" and the pre-1925 law, transitional provisions and the modern law are dealt with under each sub-head. This arrangement is unusual and awkward and makes it unnecessarily difficult to trace individual points satisfactorily. Modern developments do not seem to be grouped together satisfactorily. For example, although the deserted wife's licence is dealt with shortly and coherently, other licences are scattered about without any proper means of tracing them, *e.g.*, *Re Webb's Lease* [1951] Ch. 808 under exceptions and reservations at p. 652, *Hopgood* v. *Brown* [1955] 1 W.L.R. 213 under easements at p. 647. The estoppel point in the latter case is merely mentioned in a footnote at p. 756 without any indication of the extent to which estoppel can bind subsequent purchasers. *Re Ellenborough Park* [1956] Ch. 131 does not make the grade at all. Liability under positive covenants does not receive adequate treatment.

In a book of this nature, the index is of the utmost importance, but it is seriously defective. If one wishes to trace possessory title, it will not be found under "adverse possession," "prescription," "parliamentary title," "limitation of actions" or "Statutes of Limitation." "Estoppel" will not lead one to *Hopgood* v. *Brown*, nor is "licence" or "map" very illuminating.

Williams on *Title* is not a book to be placed in the hands of an inexperienced managing clerk, but to the practitioner with a sound basic knowledge it is a very useful book, not least for the author's personal views on matters of

doubt and controversy. What appear to be defects are principally matters of detail which hamper quick reference: what is there is reliable, and nearly everything is there.

E. F. G.

The Principles of Modern Company Law. 2nd ed. By Professor L. C. B. Gower, LL.M., Solicitor. London: Stevens & Sons, Ltd. xlvii and 605 and (index) 25 pp. (£2 10s. net.)

Although there have been few major changes in English company law in the three years since Professor Gower first produced this admirable book the second edition now published more than justifies its early appearance.

The most changes have been made in Part V of the book dealing with investor and creditor protection, where the chapters on "majority rule and its limitations" and "minority protection" have been replaced by and extended into four chapters dealing comprehensively with "limitation of the power of the general meeting," "directors' duties," "controlling shareholders' duties," and the enforcement of these two duties. This new arrangement is a welcome improvement on the first edition's rather slight treatment of these subjects and it enables the author to consider the several topics at some length.

The chapter on directors' duties (Chapter 23) contains a full discussion of the relationships existing between directors, individually and as a board, and the company and its individual shareholders, including the respective rights and liabilities arising when a take-over bid is made. Chapter 24 includes a review of the rule in *Foss* v. *Harbottle* which Professor Gower in his preface says he now believes he understands but has little confidence that readers will share this belief. Certainly the difficulties, ambiguities and scope for possible injustice inherent in the rule are fully brought out. When discussing the application of section 210 in Chapter 25 as much as possible is gleaned from recent decisions here, and the footnotes add the South African experience under a similar provision in South African company law.

This is a branch of law that is evolving quickly and continually not only in this country but throughout the world, although not so quickly as the underlying circumstances it seeks to regulate. Professor Gower illuminates the whole subject with his enormous erudition in both academic and practical matters and calls in aid both Commonweath and American experience of similar problems. A table setting out in full the many references found in the footnotes would be appreciated.

D. B.

Fraud in Equity. A Study in English and Irish Law. By L. A. Sheridan, LL.B., PH.D. London: Sir Isaac Pitman & Sons, Ltd. (40s.)

It is difficult for a practising lawyer writing in a journal for practising lawyers to do justice to this book, which is written by a scholar and jurist with the object no doubt of ascertaining and expounding the trust without regard for the more mundane consideration whether there will be a big demand for his production. Undoubtedly the practitioner who finds himself up against a problem where his client has had some sort of dirty trick practised upon him which does not fit into any (to him) recognisable category of fraud would do well to look in this book for help, but it is unlikely that he will think it necessary to obtain a copy for himself.

The author, starting with the proposition laid down in certain doggerel lines to the effect that fraud, accident and breach of confidence have place in courts of conscience, points out that equity was dealing with various aspects

of fraud at a much earlier date than that at which the common law tort of deceit was developed. For instance, fraud as a ground for preventing the running of the statute of limitations was until the Limitation Act, 1939, purely a matter of equity. This point is illustrated by reference to the law on such topics as undue influence; unconscionable bargains; constructive notice; and the effect on priorities of carelessness with the title deeds. On these and other topics the authorities (both decided cases and legal literature) are competently assembled and analysed. All the same the book lacks unity, and though it is undoubtedly a learned monograph the utility of the book as a whole to a practising lawyer is problematical.

J. G. M.

Emmet's notes on Perusing Titles and Practical Conveyancing, Vol. II. 14th ed., 1956. By J. Gilchrist Smith, Solicitor, Deputy Town Clerk of Middlesbrough. cxxxi and 628 and 71 pp. Solicitors' Law Stationery Society, Ltd. (£4.)

Volume II of the 14th edition of *Emmet* has now been published and well maintains the standard which conveyancers have come to expect of the work. Volume I, it will be recalled, treats of the sale of land in the narrow sense only. The present volume deals with various collateral matters, in particular, Settled Land and trusts of land, Leases, Mortgages, Wills, Intestacy and Death Duties, Town and Country Planning and Registered Land.

Many of these topics have had to be substantially rewritten since the last edition, owing to the intervention of the legislature with such measures as the Intestates Estates Act, 1952, the Town and Country Planning Acts, 1953 and 1954, and the Landlord and Tenant legislation of 1954. (Of course, legislation in relation to unfurnished dwelling-houses has once more overtaken the editor.)

The treatment of Settled Land and other trusts of land is good: Volume I dealt with this subject from the point of view of a purchaser of the land and here (appropriately cross-referenced) it is seen from the point of view of the solicitor dealing with the settlement itself. There were, however, places where this reviewer, mindful of the standing of this work, looked eagerly for the editor's solution of various problems, only to be disappointed.

Thus, in Volume I (p. 141) the editor deals with S.L.A., s. 110 (2) proviso, and again in the present volume (pp. 27–28). The reader is informed that in such a case a purchaser is obliged to investigate the equities; he is not informed of the editor's opinion regarding the manner in which he is first to determine whether the settlement is irregular so as to require him to investigate. Again, the attempt to reconcile *Re Bridgett & Hayes' Contract* with *Re Cugny's Will Trusts* is not happy; the conclusion is suggested that *Re Bridgett & Hayes* should apply where A.E.A., s. 22, is relevant and *Re Cugny* where S.L.A., s. 36 (2), is (p. 45). The reader would prefer the editor's guidance so as to assist him, *e.g.*, in a case where a gift is made to A for life with remainder to B and C as joint tenants in fee simple. Who then takes out the grant on the death of A? Another problem which seemed to this reviewer to have been left in the air was that of the relation between the trust for sale and settled land: the editor (in the reviewer's submission) has incorrectly stated the effect of *Re Leigh's Settled Estate* (*No. 1*) and that of *Re Ryder & Steadman's Contract* (which was based solely on the interpretation of the transitional provisions of the L.P.A., and is practically impossible to reconcile with the other cases—*e.g.*, *Re Gaul & Houlston's Contract*). A solicitor trying to advise trustees which person was entitled to a vesting instrument in the light of this discussion might as well go to Counsel first as last. Again, *Re Simmons' Trusts* is mentioned on p. 88 (indexed to p. 85) without saying that the facts in that case were identical with those in *Chapman* v. *Chapman* and that the *ratio decidendi* of Danckwerts J. is inconsistent with dicta in the speech of Lord Morton in *Chapman* v. *Chapman* [1954] A.C. at p. 461.

One very useful feature, however, about the Settled Land section is the list of "reminders" for dealing with settled land. The practitioner may not infrequently be faced with settled land when he least expects it; and considering that one of his problems is the narrow margin between Settled Land and Trust for Sale, it is a little surprising to find them separated by 380 pages.

The treatment of leases is very full (128 pp.), as befits this important topic. In this section, as elsewhere, the editor mentions the specific town planning matters which must be borne in mind in relation to this particular question. The treatment is very lucid and complete, except for the surprising apparent omission of the licence to occupy land. In Volume I the husband and wife cases are dealt with in their place (p. 345) and there is a paragraph on p. 203 about licences and the doctrine of notice. But there is no detailed treatment of the contractual licence and its problems. (See *Conveyancer*, Vol. 14, pp. 402–404; Vol. 15, p. 297; Vol. 17, pp. 440–449.) There is a very good discussion on the problems of covenants against assignment (p. 158) and it is no fault of the editor that the summary of the Rent Restriction Acts was out of date before it was fairly in print.

Since the last edition, the Courts (Emergency Powers) Act, 1943, with its restrictions on the exercise of mortgagees' powers has gone and the section on mortgages has been relieved to that extent; but the problems associated with the grant of tenancies by mortgagors (*Universal Permanent Building Society* v. *Cooke*) has arisen and there is a very helpful discussion. The question of obtaining the deeds does not seem to be considered except incidentally when dealing with priorities and the problems are not mentioned. (*Cf.* M. J. Albery's article in *Conveyancer*, Vol. 8, p. 145.) The section on Town and Country Planning has called for extensive revision following the amendment of the financial provisions of the 1947 Act. The town planning provisions which chiefly concern the conveyancer are dealt with here in some forty-three pages but in addition town planning problems are considered throughout at the appropriate places where they are likely to arise, *e.g.*, at pre-contract inquiries stage (Vol. I, p. 13), leases, mortgages, Settled Land, and so forth.

Other aspects of the property lawyer's work are covered in the sections on Wills, Intestacy, Family Provision and Death Duties and there is a useful appendix of tables showing succession to property on intestacy at various periods. There is a good discussion on the problems of assents by personal representatives in their own favour (p. 474, to which there is an incorrect reference on p. 469). (One small point here struck the reviewer: *Ironmongers Company* v. *Att.-Gen.* is not authority for the proposition for which it is quoted on p. 401.) The book concludes with chapters on Copyholds and Registered Land, the latter, of course, a matter of increasing importance to the provincial solicitor and this is a very useful introduction for one unfamiliar with the principles involved.

Special mention should be made of (1) the very complete cross-references to Volume I both in the chapter headings and in the body of the text; (2) *Addenda et corrigenda* to Volume I, which not only gives the references from that volume to the present (an inconvenient but unavoidable arrangement) but also bring the text of Volume I up to date so far as it was possible; (3) the helpful references to periodical literature where particular points raised may be found discussed at greater length. The reviewer wonders whether this might be extended also to textbooks. One has in mind such subjects as the Rent Restriction Acts and Perpetuities, where the reader could pursue points which could not be considered adequately owing to lack of space in the present volume.

All in all, this volume is a worthy successor to the previous editions and is an essential for any conveyancer.

H. R. G.

We have also received:—

Current Legal Problems, 1957. Edited by Professor George W. Keeton, m.a., ll.d., Barrister-at-Law, and G. Schwarzenberger, ph.d., dr.jur. Stevens & Sons, Ltd. 313 pp. (£1 15s.)

This volume of lectures delivered under the auspices of the Faculty of Laws of University College, London, during the 1956–57 session, surprisingly, contains little of special interest to conveyancers. Mr. Scamell's lecture on The Reform of the Settled Land Act, 1925, reiterates the view that the strict settlement is now outmoded, but it seems hardly likely that we can expect any legislation on this subject. As usual, the lectures are of considerable general interest.

The Frederic William Maitland Reader. By V. T. H. Delany, Barrister-at-Law. Pocket Series, Volume 10. Oceana Publications, Inc. 254 pp. (Paper wrapper 8s.; bound £1 7s.)

The cover of the paper wrapper, with its irrelevant illustration of a High Court judge, is reminiscent of the rather crude paper-backed thrillers to be found on bookstalls, but, despite its unpleasing get-up, this note-book is of considerable interest. Maitland wears very well indeed and the selection of his writings has, on the whole, been excellently made, though occasionally some of the shorter extracts seem hardly worthy of inclusion. The selected epigrams show, if anything, that Maitland was not given to making epigrams.

Citadel, Market and Altar. By Spencer Heath. The Science of Society Foundation, Inc. 259 pp.

The author is apparently a lawyer who manufactured aeroplane propellers. He finds his Utopia in pre-Norman England and would like to see a new social system come into being in which all, or nearly all, social services would be supplied by landlords. We cannot profess to understand the philosophy and think that even the most extreme anti-socialist would find difficulty in getting a single vote for a political platform based on it.

Woodfall on Landlord and Tenant. Second Permanent Supplement. Volume 1, Business Tenancies, etc. Sweet & Maxwell. (25s. net.)

This is in essence a reprint of the second edition of Blundell & Wellings on the *Landlord and Tenant Acts, 1927 and 1954* (reviewed *ante*, p. 79), but omitting the chapter on long tenancies of residential premises, which has been transferred to Volume 2 of the Second Permanent Supplement, to be published later this year.

The Law relating to Monopolies, Restrictive Trade Practices and Resale Price Maintenance. By the Rt. Hon. Viscount Hailsham, p.c., q.c., m.a., and Robin McEwen, m.a., Barrister-at-Law. Butterworth & Co. (Publishers), Ltd. v, 56, (Appendices) 50, (index) xi pp. (£1 2s. 6d.)

The Law of Restrictive Trade Practices and Monopolies. By H. Heathcote-Williams, q.c., m.a., Emrys Roberts, m.b.e., m.a., ll.b., Barrister-at-Law, and Ronald Bernstein, d.f.c., b.a., Barrister-at-Law. Eyre & Spottiswoode, Ltd. xv, 120 (Appendices) 96, (index) vii pp. (£1 16s.)

Monopolies and Restrictive Trade Practices. By Michael Albery, Q.C., and C. F. Fletcher-Cooke, M.P., Barrister-at-Law. Stevens & Sons, Ltd. xvi, 107, (Appendices) 69, (index) ix pp. (£1 7s. 6d.)

The Law of Restrictive Trade Practices and Monopolies. By R. O. Wilberforce, Q.C., Alan Campbell, M.A., Barrister-at-Law, and Neil P. M. Elles, M.A., Barrister-at-Law; Consulting Editor: R. Gresham Cooke, C.B.E., M.P., Barrister-at-Law. Sweet & Maxwell, Ltd. xxiv, 445, (Appendices) 200, (index) xxxi pp. (£4 4s.)

Legislation against monopolies and restrictive trade practices was something of a novelty in Britain when in 1948 the Monopolies and Restrictive Practices (Inquiry and Control) Act was passed. References were made to the Monopolies Commission by the Board of Trade, and an inquisition would then take place. In the light of various specific reports and, in particular, the general report on Collective Discrimination 1955 (Cmd. 9504) the Monopolies and Restrictive Trade Practices Act, 1956, was passed. This Act has widely extended the scope of the 1948 Act and has established a new court called the Restrictive Practices Court, whose function it is to decide on the effect upon the public interest of various arrangements between manufacturers and traders; at the same time the functions of the Monopolies Commission have been restricted to monopolies strictly so-called and restrictive practices in relation to exports of goods produced in the United Kingdom.

The effect of this new legislation will be significant upon many agreements within a trade, and manufacturers and traders are likely to seek advice upon whether existing agreements are registrable as well as upon their future policy; and as this subject is largely *res integra* in English law, much literature and comment has been forthcoming for the guidance of the lawyer, asked to advise on the problems called into being by the new Act.

Hailsham and McEwan is a reprint of the volume originally published in Butterworth's Annotated Legislation Service. The narrative is in two parts, dealing respectively with monopolies (in the light of previous legislation) and Restrictive Trade Practices including resale price maintenance arrangements. This is followed by an annotated text of the Acts of 1948, 1953 and 1956, relevant parts of the Patents Act and Rules, 1949, and the Registration of Restrictive Trade Agreements Order, 1956, in the style familiar to users of Halsbury's *Statutes*, with references over to the narrative. The narrative itself is virtually a rephrasing of the terms of the Acts and Orders in what seems to be a logical sequence, with comment here and there. The style is strictly functional; the text is suitably tabulated and freely cross-headed. There is no table of cases referred to in the text.

Albery and Fletcher-Cooke is a brief and readable account of the new law, setting out to cover the field in a more general way than merely explaining the Acts. This reviewer found the most interesting material in Chapters IV ("The Court and the Public Interest") and VIII (which relates the public policy of the Acts to the existing private law rules) possibly because these places seemed to display a degree of originality which was not practicable elsewhere. The rest of the book—that is, the essential parts—is simply a re-alignment and restatement of the terms of the Acts and Order, although a determined effort has clearly been made to put the subject-matter into a reasonably palatable form.

Besides the text of the Acts and the 1956 Order, the authors include the text of the Dental Goods Order, 1951 (the only Order made under the 1948 Act), and summaries of the various reports of the Monopolies Commission given before the present Act was passed.

Heathcote-Williams, Roberts and Bernstein is another brief summary of the Acts and the 1956 Order (120 pp.), similar in many respects to *Albery and*

Fletcher-Cooke. It is well written but (like the other books) suffers from the handicap imposed by the form of the legislation. This book includes, in particular, more illustrations of restrictive practices drawn from sources other than the reports of the Monopolies Commission—*e.g.*, the Net Book Agreement. Also included is a description of the procedure and practice of the Commission (pp. 104–109) with a degree of detail which is not to be found in any of the other books at present reviewed. The appendices cover, besides the Acts of 1948, 1953 and 1956, and the 1956 Rules, a very useful summary of the law of representative foreign countries relating to restrictive trade practices.

The table of cases is in a somewhat unusual form; it also fails to give a *Law Reports* reference to *Drive Yourself Hire Co.* v. *Strutt*, the plaintiff's name in the *Ballymacelligott Co-operative Society* case is mis-spelt, and *London Corporation* v. *Cox* is indexed under "M" for "Mayor."

Wilberforce, Campbell and Elles is a much more ambitious work, and is described on the dust-cover as "designed to be the definitive work on the subject." Its scale may be judged from the fact that there are 445 pages of text alone as well as 200 pages of appendices.

The authors have sought to place the problems of monopolies and restrictive practices in their social and historical setting as a background for the examination of the legislation. The discussions are closely-reasoned and detailed; in general the section is reproduced in the text and then analysed, in contrast to the practice adopted in the other books here reviewed, where the section is, as a rule, paraphrased in such a form as to bring out what is believed to be its meaning. There are very few footnotes: where decisions or other statutes are thought to be relevant they are embodied in the text. This, of course, makes for length; but it is helpful to the practitioner who likes to find all his material within two covers. The text and appendices are divided into numbered paragraphs and all references in the index are to paragraphs and not to pages; this takes some time to get accustomed to.

The appendices include besides the relevant Acts and Orders, the text of the Report on Collective Discrimination (Cmd. 9504), lengthy summaries of the various reports of the Monopolies Commission, the Dental Goods Order of 1951, and a fairly detailed consideration of Monopolies and Restrictive Practices legislation overseas.

Each of the above reviewed books have their particular merits: *Hailsham and McEwan* is a handbook for the lawyer faced with the provisions of the Act; *Albery and Fletcher-Cooke* and *Heathcote-Williams, Roberts and Bernstein* are essentially introductions to the subject to a person coming to it for the first time; and *Wilberforce, Campbell and Elles* is a detailed and largely complete work for the practitioner who is regularly engaged in advising on the numerous problems the 1956 will pose: his answer will be here.

H. R. G.

Income Tax Law and Practice. 27th ed. Supplement. By Newport and Plunkett. Sweet & Maxwell. (3s. 6d.)

PRECEDENTS

FORM 1

Agreement for the sale (by way of long lease) of a Plot of Land with contract to build a House thereon (*a*).

(*Supplied by Messrs. Baxter, Caulfield & Co., Solicitors, Huddersfield*)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN —— of *etc.* and —— of *etc.* (hereinafter called "the Ground Landlords") of the first part X COMPANY LIMITED whose Registered Office is situate at *etc.* (hereinafter called "the Builders") of the second part and —— of *etc.* (hereinafter called "the Buyer") of the third part

Parties.

WHEREAS:—

Recitals:

(1) The Ground Landlords are seised in fee simple of (*inter alia*) the plot of land (hereinafter referred to as "the Site") described in the Schedule hereto

of seisin;

(2) On the —— day of —— 19— Planning Permission was granted by the [*local Planning Authority*] to the Builders for the erection of —— houses on land of which the Site forms part

Of grant of Planning Permission;

(3) The said Council on the —— day of —— 19— pursuant to the Public Health Act 1936 approved the plans of the said houses for the purposes of the Building By-laws

Of By-law approval.

NOW IT IS HEREBY AGREED AND DECLARED as follows:—

Agreement:

(*a*) The purpose of this agreement is to provide reasonable protection to a purchaser of a modest house on a building estate without requiring the incorporation of building specifications. Its terms have been designed to ensure that no *ad valorem* stamp duty will be payable on the value of any building erected on the land *after* the date of the Agreement and notwithstanding that the builder may be the agent or nominee of the ground landlords. The Agreement will attract duty at 2s. per cent. in respect of Clause 9 (2) plus 6d. "agreement" duty if under hand only.

to grant Long Lease;

1. The Ground Landlords shall grant and the Buyer shall take a lease (hereinafter called "the Lease") of the Site for a term of 999 years at a yearly rent of £—— in the form of the hereinafter mentioned draft with such variations (if any) as circumstances may render necessary. Such draft is available for inspection by the Buyer at the offices of [*the Ground Landlords' Solicitors*] prior to the signing of this Agreement and the Buyer shall be deemed to have full knowledge of the form and contents thereof.

To erect House.

2. At the request of the Buyer and for the consideration and subject as hereinafter mentioned the Builders hereby agree

(1) To erect and complete the house on the Site in accordance with the said planning permission and modifications (if any) subsequently approved by the said Council and the plans submitted and the specifications thereby having effect under the Building By-laws of the said Council

(2) That they will commence and thereafter proceed to erect and complete the house on the site in manner aforesaid with all reasonable speed (due allowance being made for any delay attributable to fire tempest frost or other inevitable cause or from any strike or lock-out in the building or ancillary trades or inability to obtain supplies or material and/or labour) in a workmanlike manner and shall provide at their own cost all materials plant skilled and unskilled labour necessary for so erecting and completing the house and on so completing the Builders shall remove from the site and premises all surplus materials and rubbish.

Consideration.

3. The consideration payable by the Buyer to the Builders under this Agreement shall be:—

(1) The sum of £—— whereof £—— part thereof shall be payable by the Buyer to the Builders on or before the signing of this Agreement and £—— the remainder thereof shall (notwithstanding that the forming and making of any street may be incomplete) be payable within seven days after completion of the house and forthwith upon such sum being paid the Builders shall give possession of the house to the Buyer and if such payment is delayed beyond the above date fixed for payment then the Buyer shall pay interest at the rate of

five pounds per centum per annum on the balance purchase moneys outstanding and calculated from such date or the date of entry into possession (whichever be the earlier) to the date of actual payment

(2) The further sum of £—— (for Surveyor's fees in respect of building and layout plans submitted to the said Council for planning permission affecting the site) payable within seven days after completion of the house

(3) Such proper further sum or sums for extras to or alterations from the original approved plans and specifications installed or carried out at the request of the Buyer, such sum or sums to be payable after the work to which they relate has been carried out and within seven days of delivery of an account in respect thereof

Completion.

4. The granting by the said Council of provisional permission to occupy the house shall for the purpose of this Agreement signify the completion of the house and any warranty or guarantee implied on the part of the Builders is hereby expressly excluded

Roads, drains, sewers, *etc.*

5. On payment by the Buyer of the sum specified in Clause 3 (1) the Builders shall discharge all liability for the forming, surfacing and making of any street or road (and all drains sewers watercourses pipes and cables thereunder) coextensive with the Site, but the subsequent upkeep thereof and any cost involved when any such street or road shall be taken over by the highway authority shall be borne and paid by the Buyer who hereby exonerates and indemnifies the Builders from and against all actions costs claims expenses and demands in respect thereof

Deviations.

6. In the event of any materials fittings or fixtures mentioned in the said specifications being in short supply or obtainable only on long delivery dates the Builders reserve the right to employ and use alternative or substitute materials fittings or fixtures and in so doing shall not be deemed to have made any breach of this Agreement. The Buyer shall not be entitled to raise objection or make any claim for compensation or loss in consequence thereof so long as such alternative or substitute materials fittings or fixtures shall be of like value

Licence to occupy.

7. If the Buyer by permission of the Builders enters into possession of the house prior to actual completion of his purchase he does so only by courtesy of the Builders and on the clear understanding that he shall if so required by the Builders on three days notice at any time prior to completion forthwith vacate the house remove all his goods and chattels therefrom leave the house in good clean repair and condition and return the keys thereof to the Builders (*b*)

Moneys deposited under New Streets Act, 1951.

8. If the Buyer shall at any time receive from the —— Council any moneys deposited with the Council under the provisions of the New Streets Act 1951 then unless and save in so far as the Buyer provided such moneys in the first instance over and above the consideration payable under Clause 3 hereof the Buyer shall hold such moneys or the balance thereof as the case may be upon trust for the Builders to whom the Buyer shall forthwith pay them over immediately upon receipt (*c*)

Equitable charge of Lease.

9. (1) Immediately upon the granting of the Lease the Buyer shall deposit the same with the Builders to the intent that the same may be retained by the Builders as a security for the payment of the moneys due or to become due under the terms of this Agreement and the Buyer hereby irrevocably authorises the Ground Landlords to deliver such Lease to the Builders whose receipt therefor shall be a good and sufficient discharge to the Ground Landlords

(2) For a more effectual security the Buyer charges the premises comprised in the said deeds and writings and the proceeds to arise from any sale thereof or of any part thereof with the payment of all such money and liabilities as aforesaid

(3) The Buyer hereby undertakes that whenever required by the Builders he will at his own expense execute to the Builders

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(*b*) The purpose of this clause is to give the builder some protection where, as is often the case on a large building estate, the purchaser is let into occupation quite informally by the builder giving him the key on the site prior to completion and frequently without legal advice.

(*c*) This clause is an endeavour to cover the position under the New Streets Act if the works are carried out and the streets adopted subsequent to the completion of the purchase of the house so that under the terms of the Act the deposits are returnable to the frontagers at that date.

or as the Builders shall direct a legal mortgage of the Site and the terms of such mortgage shall authorise the exercise of any statutory power of sale without notice at any time and shall contain such clauses for the benefit of the Builders as the Builders may reasonably require (*d*)

AS WITNESS the hands of the parties hereto

THE SCHEDULE HEREINBEFORE REFERRED TO

ALL THAT plot of land (hereinbefore referred to as "the Site") situate in and fronting to —— Road —— in the County of —— and being numbered Plot No. —— on the Builders' Estate Plan which has been deposited with [*the Ground Landlords' Solicitors*] The property.

(*d*) This clause, it is felt, puts the builder in a safer position than he would be under unconnected contracts of sale of the plot of land and the work and labour for erection of the dwelling-house—in the latter case it is felt that the purchaser could remove into the house, demand his Title Deeds, and mortgage the property to a Building Society, leaving the builder only with the remedy of suing for work done.

FORM 2

Deed releasing one of three joint and several sureties of several mortgages affecting respectively different properties and substituting a new surety in his place.

(Drafted by Peter Elman, Esq., of the Middle Temple)

Parties. THIS DEED is made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the Mortgagee") of the first part —— of *etc.* (hereinafter called "the Borrower") of the second part —— of *etc.* and —— of *etc.* (hereinafter called "the Continuing Sureties") of the third part —— of *etc.* (hereinafter called "the Retiring Surety") of the fourth part and —— of *etc.* (hereinafter called "the New Surety") of the fifth part

Recitals: WHEREAS:—

of seisin; (1) The Borrower is the estate owner in fee simple of the three several properties particulars of which are set out in the Schedule hereto

of legal charges; (2) By three separate Legal Charges all dated the —— day of —— 19— and all made between the Borrower of the first part the Continuing Sureties and the Retiring Surety of the second part and the Mortgagee of the third part the Borrower charged to the Mortgagee each of the said three several properties to secure respectively the moneys including the further advances in each of the said three separate Legal Charges mentioned

of Suretyship; (3) The Continuing Sureties and the Retiring Surety were together parties to each of the said three separate Legal Charges as joint and several sureties for the payment of the said moneys including the said further advances and the performance and observance of the covenants by and on the part of the Borrower upon the terms and subject to the conditions in each of the said three separate Legal Charges mentioned and contained

(4) As regards part of the said property first mentioned in the said Schedule hereto and lettered (a) therein the said Legal

Charge relating thereto has been duly and fully discharged by the Borrower as the Mortgagee hereby acknowledges and the Continuing Sureties and the Retiring Surety and each of them are and is no longer liable as sureties or otherwise in respect of any claim or demand thereunder

of desire by Retiring surety to retire from suretyship;

(5) The Retiring Surety desires to be released and discharged from his liability as surety or otherwise in respect of each and every of the remainder of the said three separate Legal Charges (hereinafter called "the subsisting Legal Charges") so far as the same are still subsisting and enforceable

of agreements.

(6) The Mortgagee and the Continuing Sureties and each of them have and has agreed to release and discharge the Retiring Surety as aforesaid upon having the New Surety substituted for the Retiring Surety as a surety of the subsisting Legal Charges

(7) The Borrower and the Continuing Sureties and each of them have and has agreed to release and discharge the Retiring Surety as aforesaid without releasing discharging or otherwise affecting their or his liability under each of the subsisting Legal Charges

(8) The New Surety has agreed to become a surety of the subsisting Legal Charges jointly and severally with the Continuing Sureties upon the terms and subject to the conditions hereinafter contained

Now in pursuance of the said agreements THIS DEED WITNESSETH as follows:—

Release of Retiring Surety by Mortgagee.

1. The Mortgagee hereby releases and for ever discharges the Retiring Surety and his estate of and from (1) all and each of the liabilities of the Retiring Surety past present and future under and by virtue of all or any of the subsisting Legal Charges and (2) all actions proceedings claims and demands whatsoever which the Mortgagee had has or shall or may have against the Borrower and the Continuing Sureties or any one or more of them for or in respect of any moneys due or becoming due under each and every of the subsisting Legal Charges or any other matter or thing whatsoever arising or which may arise thereunder or by virtue thereof

Confirmation of liability of Borrower and continuing Sureties.

2. Provided nevertheless and it is hereby agreed and declared

that as between the Mortgagee the Borrower and the Continuing Sureties or any of them nothing hereinbefore contained shall release or discharge or in any manner prejudice or affect any right claim or demand whatsoever which the Mortgagee had has or shall or may have under and by virtue of all or any of the subsisting Legal Charges against the Borrower and the Continuing Sureties or any of them

Release of Retiring Surety by Borrower and continuing Sureties.

3. The Borrower and the Continuing Sureties and each of them hereby release and for ever discharge the Retiring Surety from all actions proceedings claims and demands whatsoever which they or he had or have or has or shall or may have under or in respect of each and every of the subsisting Legal Charges and the liability of the Retiring Surety as co-surety or otherwise thereunder

Confirmation of liabilities of Borrower and continuing Sureties.

4. Provided nevertheless that as between the Borrower and the Continuing Sureties or any of them nothing hereinbefore contained shall release or discharge or in any other manner affect their or his respective liabilities and obligations under or in respect of each and every of the subsisting Legal Charges

Covenants by New Surety.

5. The New Surety hereby covenants with the Mortgagee that the Borrower will duly pay the moneys now outstanding and the further advances if any and perform and observe the covenants by and on the part of the Borrower upon the terms and subject to the conditions in each and every of the subsisting Legal Charges contained as if he the New Surety were a party thereto respectively and his name were inserted therein respectively in substitution for the name of the Retiring Trustee

6. The New Surety hereby covenants with the Continuing Sureties that as between the New Surety and the Continuing Sureties the New Surety shall henceforth be liable as surety under each and every of the subsisting Legal Charges jointly and severally with the Continuing Sureties as if he the New Surety were a party thereto respectively and his name were inserted therein respectively in substitution for the name of the Retiring Surety

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 3

Deed of Family Arrangement and Release Between Members of a Family Company (husband and wife) and Accompanying Trust Deed.

(Drafted by C. R. D. Richmount, Esq., of Lincoln's Inn)

I

Deed of Family Arrangement and Release

THIS DEED OF FAMILY ARRANGEMENT AND RELEASE is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "AB") of the first part CD of *etc.* (hereinafter called "CD") of the second part and XY LIMITED whose registered office is situate at —— *etc.* (hereinafter called "the Company") of the third part

SUPPLEMENTAL to a Deed of Family Arrangement (hereinafter referred to as "the Principal Deed") dated the —— day of —— 19— and made between AB of the first part CD of the second part and the Company of the third part whereby (amongst other things) CD agreed to deposit with AB the certificate of the shares held by him in the Company as security for the continuance of the appointment of AB as Assistant Secretary of the Company for the period of her life at a salary of £—— per annum and the due payment to AB of her said salary and (in addition) entered namely by and in clause 5 thereof into covenants for indemnity with AB with respect to the leasehold premises known as —— *etc.*

WHEREAS:—

(1) On the —— day of —— 19— there was due and owing to AB the following sums that is to say:—

(a) The sum of £—— (hereinafter referred to as "the said arrears of rent") being arrears of rent owing by the Company under the terms and provisions of a Lease (hereinafter referred to as "the said Lease") dated the —— day of —— 19— and

made between AB and CD of the one part and the Company of the other part whereby the premises aforesaid were demised to the Company from the —— day of —— 19— for the term of 99 years or the life of AB (whichever is the shorter) at the yearly rent of £——

(b) The sum of £—— (hereinafter referred to as "the said arrears of salary") being arrears of salary payable to AB as the Assistant Secretary of the Company under the provisions of a Service Agreement (hereinafter referred to as "AB's Service Agreement") dated the —— day of —— 19— and made between the Company of the one part and AB of the other part

(2) AB is desirous of assisting the Company with regard to the said arrears or rent and the said arrears of salary and being so desirous as aforesaid AB has with the concurrence of CD agreed with the Company to deal with the said arrears of rent and the said arrears of salary in manner hereinafter provided and (in addition) AB has agreed (subject as hereinafter provided) to determine her appointment as assistant secretary of the Company under the provisions of AB's Service Agreement

(3) AB has a grandson namely JAB (hereinafter called "the grandson") who is an infant and was born on the —— day of —— 19—

(4) AB is desirous of making such provision for the grandson as hereinafter appears

NOW THIS DEED made by way of Family Arrangement for the purpose of carrying into effect the hereinbefore recited desires of AB and for the divers good considerations hereinafter appearing

WITNESSETH as follows:—

1. (1) Subject to the due performance by CD of his covenants and agreements with AB contained and set out in sub-clauses (1) and (2) of clause 2 hereof AB hereby releases CD from all obligations and agreements imposed upon or entered into by CD by and in clause 4 of the Principal Deed

(2) Save and except as provided in sub-clause (1) the Principal Deed shall remain in full force and of effect

2. (1) CD hereby covenants with AB that he will exercise all voting rights attached to the shares held by him in the

Company for the purpose of procuring the appointment of AB as chairman of the Company for the period of her life at a salary of £—— per annum payable weekly at the rate of £—— per week and as a joint Governing Director of the Company for and during her life

(2) CD hereby agrees with AB that he will join with AB in procuring that the Articles of Association be altered in such manner as shall be necessary to carry into effect the covenant on his part contained in sub-clause (a) of this clause and that in performance of his agreement just hereinbefore contained he will:—

(a) Procure that an Extraordinary General Meeting of the Company shall be summoned and convened within one month from the date of this Deed for the purpose of proposing and passing thereat a special resolution altering the Articles of Association by deleting Articles —— and —— and substituting therefor the Article or Articles set out in the First Schedule hereto

(b) Attend in person at the said Extraordinary General Meeting hereinbefore provided for and will thereat exercise all voting rights attached to the shares held by him in the Company in voting for and procuring the passing of the special resolution just hereinbefore provided for and that he will not do or permit any act or thing which will or may cause the aforesaid special resolution not to be passed by the Company in general meeting and not to become and be binding on the Company

(3) CD for himself and his executors and administrators hereby further covenants with AB that he will not nor will his executors or administrators do or attempt to do or be party to any act or thing whereby the appointment of AB as the Chairman and/or a Governing Director of the Company shall be revoked (whether by way of removal of AB from her office or otherwise howsoever) or whereby AB shall or may be or become disentitled to the receipt from the Company of her salary as Chairman of the Company at the rate of £—— per annum of (by way of reduction of salary or in any other manner whatsoever) any part of such salary and that he and his executors

and administrators will in and whenever required by AB so to do exercise all voting rights attached to CD's shares in the Company in such manner as will ensure the continuation of AB in office during the period of the remainder of her life as Chairman and a Governing Director of the Company at a salary of £—— per annum payable weekly at the rate of £—— with all the powers conferred or intended to be conferred upon her by the new Article or Articles set out in the First Schedule hereto

(4) CD for himself and his executors and administrators hereby covenants with AB that if in any year commencing as from the —— day of —— 19— during the remainder of the life of AB the net income after deduction of Schedule A tax and Income Tax of AB derived from the following namely (a) the rent received by AB during such year in respect of the said premises (to the receipt of which rent she is entitled under the provisions of the Will proved on the —— day of —— 19— of the late PQ deceased and the Principal Deed) and (b) the salary paid to and received by AB by and from the Company during such year shall be less than £—— he CD or his executors or administrators will pay to AB within one month after the expiration of such year such a sum as after deduction of income tax at the standard rate then in force will with AB's said net income produce and leave the clear sum of £—— Provided Always and it is hereby agreed and declared by and between AB and CD as follows:—

(a) That the expression "the rent received by AB in respect of the said premises" shall for all the purposes of this sub-clause (4) include any income received by AB from or in respect of the investments representing the net proceeds of sale (if any) of the said premises

(b) That CD and his executors and administrators shall not be released from his or their liability to pay to AB the said clear yearly sum provided for in this sub-clause (4) if by reason of the winding up (if any) of the Company or for any other cause or reason whatsoever AB shall cease to be in receipt of salary from the Company

(5) As security for the due performance by CD and his personal representatives of the covenants on CD's part contained in sub-clause (4) of this clause CD

(a) Hereby deposits with AB the share certificates in respect of the shares now held by CD in the Company together with transfers in blank in respect of such shares duly executed by him

(b) Charges the shares of CD comprised in the aforesaid share certificates with the payment to AB of such sums (if any) as shall from time to time become and be payable to AB by CD or his personal representatives under and pursuant to CD's covenants contained in sub-clause (4) of this clause

(c) Declares that in relation to the shares hereinbefore charged by him AB shall have and be entitled to all the powers and rights conferred upon a mortgagee of land by the Law of Property Act 1925 and shall be entitled to exercise the power of sale conferred upon a mortgagee by the said Act without the necessity of having to give such notice as is required by section 103 of the said Act

3. (1) The Company shall immediately after the Company shall have increased its authorised capital in accordance with the provisions of clause 4 hereof pay to AB the sum of £—— in full settlement of the said arrears of salary and the said arrears of rent

(2) Upon payment to AB of the said sum of £—— CD and AB shall give to the Company such receipts in respect of such sum as the Company shall properly require

(3) Subject to the proviso next hereinafter contained AB hereby releases and forever discharges the Company from all obligations imposed upon the Company by and under the terms of AB's Service Agreement and (subject as aforesaid) it is hereby agreed by and between AB and the Company that AB's Service Agreement shall henceforth be treated as null and void Provided Always that the provisions of this sub-clause shall not be operative and take effect except as from the later of the following two dates that is to say (a) the date of the payment by the Company of the said sum of £—— hereinbefore referred and (b) the date of the appointment of AB as Chairman and

a governing director (in each case for the life of AB) of the Company at a salary of £—— per annum with the powers and authorities provided for in the Article or Articles set out in the First Schedule hereto

4. AB and CD hereby mutually agree and declare that they will do all such acts and things as shall or may be necessary:—

(1) To procure that the nominal capital of the Company shall be increased from £—— divided into —— shares of £1 each to £—— by the creation of —— Preference Shares of £1 each to which Preference Shares there shall be attached the rights and privileges set forth in the Second Schedule hereto

(2) To procure the issue in accordance with the provisions of clause 5 hereof of the said Preference Shares credited (subject to AB duly performing her agreement contained in the next clause hereof) as fully paid up shares

5. (1) AB agrees with the Company that upon sub-clause (3) of Clause 3 hereof becoming finally operative and of effect she will apply to the Company for —— of the said Preference Shares of £1 each for cash at par

(2) AB agrees with CD that she will direct and CD agrees with the Company that he will join with AB in procuring that the said Preference Shares shall be allotted and issued to AB and RS of *etc.* to be held by AB and RS as trustees for the grandson upon and subject to the terms and provisions of a trust deed which has already been prepared and whereof the draft has been signed by PQ for the purposes of identification

6. Save and except as otherwise is provided by the Principal Deed and this Deed the said Will of the said PQ deceased shall remain in full force and of effect

IN WITNESS, *etc.*

THE FIRST SCHEDULE ABOVE REFERRED TO

THE SECOND SCHEDULE ABOVE REFERRED TO

II

Trust Deed

THIS TRUST DEED is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "AB") of the one part and AB and RS of *etc.* (hereinafter together called "the Trustees") of the other part

WHEREAS AB being desirous of making provision for her grandson JAB (hereinafter called "the grandson") at present residing at *etc.* and who was born on the —— day of —— 19— has caused —— Preference shares of £—— each (all fully paid up) forming part of the authorised capital of XY Limited (hereinafter called "the Company") whose registered office is situate at *etc.* to be allotted and issued to the Trustees to the intent that the Trustees shall stand possessed of the same upon the trusts and with and subject to the powers and provisions hereinafter declared of and concerning the same

NOW THIS DEED made in consideration of the natural love and affection which AB bears towards the grandson WITNESSETH as follows:—

1. In this Deed each of the expressions below set out shall have the meaning hereinafter attributed thereto that is to say:—

(1) "The said shares" mean the said —— Preference shares of £—— each issued as aforesaid to the Trustees by the Company

(2) "The Trust Fund" means and includes the said shares and any bonus shares issued by the Company in respect of the said shares and all or any other shares or investments hereafter transferred to or vested in the Trustees upon the trusts of this Deed and the investments for the time being and from time to time representing the net proceeds of sale in respect of the foregoing items or any of them

(3) "The Trustees" means and includes the Trustees herein named and the survivor of them and the executors or administrators of such survivor and all others or other the trustees or trustee for the time being hereof

2. Subject to the terms and provisions of clause 3 hereof the Trustees shall stand possessed of the trust fund upon and subject to the trusts following that is to say:—

(1) Upon trust until the grandson shall attain the age of 21 years to apply the income of the trust fund for or towards the maintenance education benefit and advancement of the grandson And in the execution of the foregoing trusts the Trustees may in their sole discretion pay the whole or any part of the income aforesaid to the grandson's parent or guardian without seeing to the application thereof by such parent or guardian

(2) Upon the grandson attaining the age of 21 years and upon and subject to the grandson duly giving effect to the provisions of clause 4 hereof the Trustees shall stand possessed of the Trust Fund as to both capital and income Upon Trust for the grandson absolutely

3. If the grandson shall for the space of three months after he shall have attained the age of 21 years refuse or neglect to give effect to the provisions of clause 4 hereof the Trustees notwithstanding anything hereinbefore contained shall stand possessed of the said shares (part of the Trust Fund) upon and subject to the trust following namely

(1) Upon trust to pay the dividends earned by or the income derived from the said shares to AB during the remainder of her life

(2) After the death of AB upon trust for the grandson absolutely And shall stand possessed of the residue (if any) of the Trust Fund upon trust for the grandson absolutely

4. Upon the grandson attaining the age of 21 years the Trustees shall request the grandson in writing to enter into a Deed of Covenant (to be prepared by and at AB's cost and expense) with AB wherein he will covenant with AB that he will:—

(1) Not during AB's life transfer mortgage or in any way deal with or dispose of the said shares or any of such shares or any beneficial interest therein

(2) During AB's life vote against any resolution which if passed by the Company in General Meeting would either procure

the removal of AB from her offices of Chairman and a Governing Director of the Company or either of such offices or cause AB to cease to be entitled to be paid and to be paid a salary by the Company not less than £—— per annum or in any way modify or alter the powers vested in AB as Chairman and/or a Governing Director of the Company being the powers defined in the Articles of the Company set out in the Schedule hereto

5. It is hereby declared that AB has caused the said shares to be issued to and vested in the Trustees upon the conditions following and the Trustees hereby covenant with AB to give effect to such conditions that is to say:—

(1) The Trustees shall retain the said shares until such time as the grandson shall become absolutely entitled thereto under the trusts of this Deed

(2) The Trustees shall not exercise any voting rights attached to the said shares in support of any resolution which if passed by the Company in General Meeting would result in any of the following namely (a) the removal of AB from her offices of Chairman and a Governing Director of the Company or (b) the removal of AB from either of such offices or (c) AB ceasing to be entitled to be paid and receive from the Company a salary at a rate less than £—— per annum

(3) It shall be lawful for the Trustees to exercise all or any voting rights attached to the said shares against any such resolution as is mentioned in sub-clause (2) just hereinbefore set out

6. [*Charging clause*]

7. The power of appointing a new trustee or new trustees hereof shall be vested in and exercised by AB during her life

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 4

Surrender by Tenant to the Landlord of a "Current Tenancy" within the meaning of Section 26 (1) of the Landlord and Tenant Act, 1954 (*a*).

(Drafted by Ernest H. Scamell, Esq.)

THIS SURRENDER is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Tenant") of the one part and CD of *etc.* (hereinafter called "the Landlord") of the other part WHEREAS:—

(1) By a Lease dated the —— day of —— 19— and made between WX of the one part and YZ of the other part the land and premises therein particularly described and then and now known as *etc.* with the appurtenances thereof (hereinafter called "the said premises") were demised by the said WX to the said YZ from the —— day of —— 19— for the term of —— years subject to the payment of the rent thereby reserved and the covenants on the part of the tenant and conditions therein contained

(2) By virtue of divers mesne assurances acts in the law and events and ultimately by a Deed of Assignment dated the —— day of —— 19— and made between RS of the one part and the Tenant of the other part the premises comprised in the said Lease became absolutely vested in the Tenant for all the residue of the said term of —— years subject to the rent reserved by and the covenants and conditions contained in the said Lease

(3) By virtue of other divers assurances acts in the law and events the Landlord [on the —— day of —— 19— (*b*)] became entitled to the freehold reversion immediately expectant upon the determination of the said Lease

(4) The tenancy created by the said Lease is one to which the provisions of section 23 of the Landlord and Tenant Act 1954 apply [*or* did not come to an end on the date of expiry of the term created by the said Lease but was continued by

(*a*) This Form has been drafted to give effect to the suggestions made at pp. 453–454 of Vol. 20 of this Journal.

(*b*) This date may be relevant in connection with recital (6)—see section 30 (2) of the Landlord and Tenant Act, 1954.

virtue of the provisions of section 24 of the Landlord and Tenant Act 1954] and is a "current tenancy" within the meaning and for the purposes of section 26 of the said Act

(5) Subject to the provisions of Part II of the Landlord and Tenant Act 1954 and apart from the provisions of this deed the said current tenancy would not come to an end but would continue by virtue of the provisions of section 24 of the said Act and subject as aforesaid the Tenant would be entitled to apply to the Court for a new tenancy

(6) The Landlord has asserted that on the termination of the said current tenancy the Landlord intends to demolish or reconstruct the premises comprised in the said current tenancy or a substantial part of those premises or to carry out substantial work of construction thereon or on a part thereof and that he cannot reasonably do so without obtaining possession of the said premises [*or as the case may be*]

(7) In consequence of the hereinbefore recited assertion of the Landlord the Tenant has agreed with the Landlord for the surrender to him of the said current tenancy and of all and every other (if any) estate interest right or entitlement whatsoever to which the Tenant is or might be or become entitled under or in respect of the said Lease or the said tenancy or the said Act or any combination thereof or otherwise upon the terms and subject to the provisions hereinafter contained

Now in pursuance of the said agreement and in consideration of [the sum of £—— now paid by the Landlord to the Tenant (the receipt whereof the Tenant hereby acknowledges) and of] the covenants and provisions hereinafter contained THIS DEED WITNESSETH as follows:—

1. The Tenant as Beneficial Owner hereby surrenders assigns and releases unto the Landlord ALL AND SINGULAR the hereinbefore recited current tenancy and all and every other (if any) estate interest right or entitlement whatsoever in the said premises to which the Tenant is or might be or become entitled under or in respect of the hereinbefore recited Lease and/or the said Landlord and Tenant Act 1954 or otherwise for all and every the estate interest right and title of the Tenant therein

or thereunder To the Intent that the said current tenancy may merge and be absolutely extinguished in the freehold reversion of the Landlord immediately expectant upon the determination thereof free from any estate interest right title or claim whatsoever of the Tenant under the said Lease and/or the said Act or (save as hereinafter otherwise provided) otherwise

2. The Landlord hereby releases and discharges the Tenant from all obligations of whatsoever kind arising under or in respect of the said current tenancy and from all actions proceedings claims and demands in connection therewith

3. The Landlord hereby covenants with the Tenant that in any of the events hereinafter specified (but not otherwise) the Landlord will pay to the Tenant the sum of £—— that is to say:—

(1) If the Landlord shall hereafter convey or lease the said premises or any substantial part thereof without having completed the demolition reconstruction or other work referred to in the recital numbered (6) herein (in this Clause referred to as "the said works")

(2) If the Landlord shall not have commenced or caused to be commenced the said works on or before the —— day of —— 19—

(3) If at any time after the date hereof it shall appear [to the satisfaction of —— who shall be entitled to call upon the Landlord to answer questions relative hereto] that the Landlord has no intention of carrying out or proceeding with the said works or has abandoned any such intention

4. Subject to the foregoing provisions of this deed and to the performance thereof by the Landlord the Tenant hereby covenants with the Landlord that the Tenant will not bring or make any action claim or demand whatsoever against the Landlord in respect of any of the matters mentioned in Clause 3 hereof and subject as aforesaid hereby accepts the benefit of the foregoing provisions of this deed in full settlement of all actions claims and demands whatsoever present and future which the Tenant has or may at any time hereafter have against the Landlord in respect of or relating to the transaction carried out by this deed or any part of such transaction

In witness, *etc.*

FORM 5

Lease of a high class unfurnished service flat at a premium and ground rent for a long term, the flat being one of a block let on similar terms. No central heating or hot water provided by landlord. Cost of outside repairs reserved as rent.

(Drafted by V. G. H. Hallett, Esq., of Lincoln's Inn)

THIS LEASE made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Lessor" which expression shall where the context so admits include his successors in title) of the one part and B of *etc.* (hereinafter called "the Tenant" which expression shall where the context so admits include his successors in title) of the other part

WHEREAS the Lessor being estate owner in fee simple of the building (hereinafter called "the Building") situate and known as *etc.* [*full address*] is desirous of letting parts thereof in flats subject to the regulations contained in the First Schedule hereto to the intent that the tenant for the time being of any flat may enforce the observance by the tenant of every other flat for the time being of the said regulations (*a*)

NOW THIS DEED WITNESSETH as follows:

1. In pursuance of the said desire and in consideration of the sum of £—— now paid by the Tenant to the Lessor (the receipt whereof is hereby acknowledged) and of the rents and covenants on the part of the Tenant hereinafter reserved and contained the Lessor HEREBY DEMISES to the Tenant ALL those rooms known as flat No. —— on the —— floor of the Building and also the coal cellar No. —— in the basement of the Building (which flat and cellar are hereinafter separately referred to as

(*a*) The regulations in the First Schedule are designed as part of a "letting scheme," to be enforceable by the tenant of each flat against the tenants of the other flats. As to when a letting scheme (to which the same principles as to building schemes apply) will be inferred, see *Kelly* v. *Battershell* [1949] 2 All E.R. 830, C.A.

Where only one flat is being let, and there will be no letting scheme, the regulations are still appropriate; but the recital should be omitted.

"the Flat" and "the Cellar" respectively) TOGETHER with the user in common with the Lessor and his other tenants and all other persons entitled thereto of the entrance hall staircases lift and passages leading to the Flat and Cellar and also of the water pipes electric and other wires flues and drains in the Building for the service of the Flat and Cellar with the benefit (in common with the other persons entitled thereto) of any covenant or agreement entered into by a lessee or tenant of any other flat or cellar in the Building with the Lessor for the observance of the said regulations

EXCEPT AND RESERVING

(1) [*If the flat is on the top floor*] To the Lessor the roof over the Flat

(2) To the Lessor and his other tenants and all persons authorised by the Lessor the free and uninterrupted passage of water and soil through the water pipes and drains and of electricity through the electric wires and meters which now are or may at any time hereafter be in on or passing through the Flat or the Cellar with power to the Lessor at all reasonable times to enter the Flat and the Cellar for the purpose of inspecting repairing renewing cleansing replacing or altering the said pipes drains wires and meters and also of painting and decorating repairing and renewing or adding to any part of the Building not included in this demise (and of painting decorating or repairing any part of the Flat in accordance with the covenants on the part of the Tenant hereinafter contained) the Lessor making good all damage done to the Flat or the Cellar in exercising such power

(3) To the Lessor and all persons authorised by him to rebuild or alter the Building (other than the Flat and the Cellar) and any of the adjoining or neighbouring buildings and to add to the Building by building extra floors on top of the existing floors or in any other manner whatever and to build upon or use the land belonging to the Lessor and adjoining to or near the Building at any time and for any purpose whatever notwithstanding any interference or damage caused thereby with or to the Flat or the Cellar or the access or enjoyment of light or air to or in

respect of the Flat *Provided* that any structural damage caused to the Flat or the Cellar shall be made good by and at the expense of the Lessor

TO HOLD the Flat and the Cellar (hereinafter together called "the Demised Premises") and the rights hereinbefore granted unto the Tenant from the —— day of —— 19— for the term of 99 years (determinable in the circumstances hereinafter mentioned) subject to the burden of the covenants or agreements already entered into by the Lessor with the lessee or tenant of any other flat or cellar in the Building for the observance of the said regulations YIELDING AND PAYING THEREFOR yearly during the said term hereby granted the rent of £—— without any deduction (other than a deduction authorised by the Income Tax Act 1952 (*b*) or any legislation amending or replacing that Act) by equal quarterly payments the first of such payments for the quarter ending on the —— day of —— next to be made on the execution of these presents and the subsequent payments to be made in advance on the four usual quarter days AND ALSO an annual sum of money equal to a proper proportion [*or state a definite fraction*] of the actual cost to the Lessor of providing (in accordance with the covenants on the part of the Lessor hereinafter contained) insurance repairs and lighting and the services specified in the Second Schedule hereto such sum to be certified by the accountant for the time being of the Lessor (whose certificate in writing shall be conclusive) in respect of each year (calculated from the —— day of ——) or the sum of £—— in any year when this shall be greater than the sum so certified such last mentioned rent to be paid without any deduction (other than a deduction authorised as aforesaid) (*c*) on the quarterly day for payment of rent next ensuing after the date of such certificate.

(*b*) See Income Tax Act, 1952, s. 506.

(*c*) Usually, income tax will be assessed on the landlord in the case of a block of flats, under Income Tax Act, 1952, s. 109: *Gatehouse* v. *Vise* [1956] 1 W.L.R. 1509 (affirmed on appeal—*The Times*, March 23, 1957); so that no question of deduction will normally arise. But it is as well to include the bracketed words, since s. 506 renders void the prohibition of a deduction authorised by the 1952 Act.

2. The Tenant HEREBY COVENANTS with the Lessor as follows:

(1) To pay the said respective rents at the times and in the manner aforesaid

(2) To pay and discharge all existing and future rates taxes duties charges assessments impositions and outgoings whatever (whether imposed by statute or otherwise and even though of a wholly novel character) now or at any time during the term payable in respect of the Demised Premises or any part thereof or by the owner or occupier thereof (saving any deduction authorised by the Income Tax Act 1952 or any legislation amending or replacing that Act)

(3) To execute and do at the expense of the Tenant all such works and things whatever as may now or at any time during the term be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Demised Premises or any part thereof or by the owner or occupier thereof

(4) To obtain all licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Tenant on the Demised Premises or any part thereof or of any user thereof during the term and to pay the reasonable fees costs and charges of the solicitors and of the surveyor for the time being of the Lessor in relation to any planning inspection or appproval or otherwise in connection therewith and to keep the Lessor indemnified in respect of any breach or non-observance thereof

(5) From time to time and at all times during the term well and substantially to repair cleanse maintain amend and keep in repair the inside of the Demised Premises and the landlord's fixtures therein and in particular as occasion requires thoroughly to sweep all chimneys and flues used for the Demised Premises and to clean all windows and all cisterns boilers and water pipes and keep all ball cocks and pipes and electric wires on the Demised Premises in good order and condition

(6) In the year —— and thereafter once in every five years of the said term and also during the last year or at the sooner

determination thereof to have professionally painted all the wood and iron or other metal work usually painted and other internal portions proper to be painted of the Demised Premises and all additions thereto with three coats of good oil and white lead paint in a proper and workmanlike manner and have all walls at any time forming part of the Flat professionally washed and painted with three coats of good paint (*d*) or papered with paper of good quality in a proper and workmanlike manner and all ceilings forming part of the Flat professionally washed and papered distempered or painted in a proper and workmanlike manner

(7) At the expiration or sooner determination of the said term quietly to yield up unto the Lessor the Demised Premises in such repair and condition as hereby provided together with all additions and improvements made thereto in the meantime and all fixtures in or upon or which during the said term may be placed in or upon the same

(8) (a) To permit the Lessor and all persons authorised by the Lessor at all reasonable times to enter upon the Demised Premises and examine the state of repair decoration and condition thereof

(b) In accordance with the Tenant's covenants in that behalf to repair decorate and make good all defects in the repair decoration and condition of the Demised Premises of which notice in writing shall be given by the Lessor to the Tenant within three calendar months after the giving of such notice

(9) If the Tenant shall at any time make default in the performance of any of the covenants herein contained for or relating to the repair decoration or maintenance of the Demised Premises then to permit the Lessor and all persons authorised by the Lessor to enter upon the Demised Premises and repair decorate or maintain the same at the expense of the Tenant (but so that no such entry repair decoration or maintenance shall prejudice the right of re-entry under the provisions hereinafter contained) and to repay to the Lessor the cost of such repair decoration or maintenance on demand

(*d*) Emulsion, as opposed to oil, paint is suitable for walls; but not for woodwork.

(10) To permit the Lessor and all persons authorised by the Lessor at all reasonable times to enter upon the Demised Premises for the purpose of executing repairs decorations or alterations of or upon any adjoining or neighbouring premises or cleansing emptying or renewing the sewers drains and gutters belonging to the same or constructing any building or erection on any land adjoining the Building making good to the Tenant all damage thereby occasioned

(11) Not to make any objection to or claim in respect of any works of construction building alteration addition or repair carried out on any part of the Building not included in this demise or on any land or property adjoining to or near the Building by the Lessor Provided Always that such works shall be carried out with as little inconvenience to the Tenant as reasonably possible

(12) Not to cut maim or remove any of the walls ceilings floors or timbers of the Demised Premises (unless for the purpose of making good defects or for installing sink cooking and heating units in a reasonable manner) nor to make any alteration in or addition to the Demised Premises nor carry out any development or change of user on the Demised Premises within the meaning of any legislation for the time being relating to town and country planning without the previous consent of the Lessor in writing (which consent shall not be unreasonably withheld during the first three years of the said term to applications for structural alteration of the Demised Premises (*e*)) or otherwise than in accordance with plans and specifications approved by the Lessor in writing

[(13) Not to do or suffer to be done on the Demised Premises or the entrance hall flats and passages leading thereto anything whereby the liquor licence held by the Lessor in respect of the Building may be or become liable to forfeiture]

(14) To permit the Lessor and all persons authorised by the Lessor at all reasonable times during the last seven years of the said term to enter upon the Demised Premises and to make

(*e*) This is to enable partitions to be put up, etc.

lists or inventories of the fixtures and things to be yielded up at the expiration of the said term

(15) Not to do or suffer to be done on the Demised Premises any act or thing by reason or in consequence whereof any increased or extra premium may become payable for the insurance of the Demised Premises or any part thereof (or of any other premises) or whereby any policy for such insurance may become void or voidable

(16) Not to assign underlet or part with or share the possession or occupation of the Demised Premises or any part thereof to a company or corporation of any description and not to assign underlet or part with or share the possession or occupation of the Demised Premises or any part thereof to any other person without the previous written consent of the Lessor such consent not to be unreasonably withheld And to procure that every permitted [assignment or] underlease of the Demised Premises shall contain a covenant by the [assignees or assignee and] (*f*) underlessees or underlessee with the Lessor (who shall be made a party to such [assignment or] underlease) to observe and perform the covenants on the part of the Tenant herein contained (except [in the case of an underlease] the covenants to pay the rents hereby reserved) and in particular a covenant not to assign underlet or part with or share the possession or occupation of the premises comprised in such [assignment or] underlease or any part thereof without the previous written consent of the Lessor such consent not to be unreasonably withheld [and in the case of an assignment also a covenant to pay the rents hereby reserved]

(17) Within three calendar months next after any transfer assignment underlease or devolution of the Demised Premises or any part thereof to give notice in writing of such transfer assignment underlease or devolution or of the underlessee (as the case may be) to the Lessor or the solicitor of the Lessor And to produce to the Lessor or the solicitor of the Lessor the instrument of transfer assignment or devolution or the counter-

(*f*) The bracketed words render an assignee liable for breaches of covenant occurring even after he has parted with the property.

part of the underlease and pay a fee of two guineas for the registration of such notice

(18) To pay to the Lessor all costs charges and expenses (including solicitors and surveyors costs and fees) incurred by the Lessor in or in contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof

(19) To pay all reasonable costs and expenses of the Lessor (including all solicitors and surveyors costs and fees) incurred in granting any consent under this Lease

(20) To pay forthwith unto the Lessor his costs and expenses of and incidental to the negotiation preparation execution stamping and perfecting of this Lease and a Counterpart thereof

(21) Not to waste or permit to be wasted any water in the Flat

(22) At all times during the said term to observe the regulations specified in the First Schedule hereto

(23) The Lessor shall not (save as hereinbefore expressly provided) be liable or responsible in any way for any injury or damage suffered by the Tenant or any invitee or licensee of the Tenant (either personally or to their property including the Demised Premises) through any defect in any fixture pipe wire staircase lift machinery or thing in or upon the Building or any part thereof (including the Demised Premises) or through the neglect default or misconduct of the Lessor or any person employed by the Lessor or any independent contractor engaged by the Lessor in connection with the Building or any part thereof or any other manner whatever AND the Tenant will keep the Lessor fully indemnified against all such liability or responsibility

3. The Lessor HEREBY COVENANTS with the Tenant as follows:

(1) The Tenant paying the rents hereby reserved and performing and observing the covenants conditions and provisions herein contained and on the part of the Tenant to be performed and observed shall peaceably hold the Demised Premises during the said term without any lawful interruption by the Lessor

(2) At all times during the said term to keep the main walls and timbers the roof drains and exterior of the Building and

the staircases entrance hall lifts and passages leading to the Demised Premises in good and substantial repair and in clean and proper order and condition and also to keep the floors and structure of the Building and all the upper parts of the Building and all cisterns and water pipes not forming part of the Demised Premises in such good and substantial order and condition as will prevent any injury to the Demised Premises or the furniture or contents thereof by structural disturbance leakage of water or otherwise and to make good all damage thereto caused by any such want of repair or leakage (*g*)

(3) Adequately to insure the Building against fire and in case of destruction or damage by fire to lay out any policy moneys which may be received in respect of such insurance in rebuilding or reinstating the same with all convenient speed

(4) To use his best endeavours to keep a servant or servants who shall perform the services specified in the Second Schedule hereto

(5) To provide a proper place for the storage of bicycles tricycles bath chairs perambulators and toy motor cars used by the Tenant and his family (none of the foregoing of which are to be motor operated or assisted) and to allow the servants of H.M. Post Office to affix repair and maintain proper telephone wires to any part of the Building in the possession of the Lessor

(6) To keep the entrance hall passages staircases and lifts leading to the Demised Premises properly lighted

(7) That every lease or tenancy agreement of a flat or cellar in the Building hereafter granted by the Lessor shall contain regulations to be observed by the lessee or tenant thereof in similar terms to those contained in the First Schedule hereto

(8) As to the parts of the Building retained by the Lessor or which may come into the possession of the Lessor by the determination or expiration of the lease of any part of the Building at all times during the term hereby granted to observe and perform the regulations specified in the First Schedule hereto

(*g*) Occupiers of flats should themselves insure against the negligence of other tenants.

4. PROVIDED ALWAYS and these presents are upon this express condition that if the respective rents hereby or any part thereof shall at any time be in arrear and unpaid for 21 days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not) or if the Tenant shall at any time fail or neglect to perform or observe any of the covenants conditions or provisions herein contained and on the part of the Tenant to be performed and observed or shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of the creditors of the Tenant or permit any execution to be levied on the Demised Premises then it shall be lawful for the Lessor to re-enter upon the Demised Premises or any part thereof in the name of the whole and peaceably to hold and enjoy the Demised Premises thenceforth And so that the term hereby granted shall absolutely determine as if this Lease had not been made but without prejudice to any right of action or remedy of the Lessor

IN WITNESS, *etc.*

THE FIRST SCHEDULE

1. To use and occupy the Flat as a private dwelling-house only for the sole occupation of the Tenant and the family and members of the household of the Tenant and for no other purpose

2. To use the Cellar only for the storage of solid fuel such as coal coke and anthracite and for no other purpose and not to store more than five gallons of paraffin in the Flat

3. Not to use the Demised Premises or any part thereof for business purposes

4. Not to apply for or obtain in any manner a grant under the Housing Act 1949 to enable works to be carried out on the Demised Premises

5. Not to permit a person of unsound mind (whether so found by inquisition or not) or a drunkard or a person of immoral life to reside in the Flat

6. Not to do or permit to be done any act to the damage or annoyance of the Lessor or the tenants of the Lessor or the

occupiers of any part of the Building or of any adjoining or neighbouring premises or the neighbourhood or any illegal or immoral act

7. Not to keep any musical instrument except a piano radio television set or gramophone in the Demised Premises and not to use the same nor allow any singing to take place in the Demised Premises except between the hours of 8 a.m. and 11 p.m.

8. Not to use any electrical device which has not an effective suppressor fitted thereto

9. Not without the consent of the Lessor to keep any live animal on the Demised Premises

10. Not to keep on the Demised Premises or in any other part of the Building (except in a part thereof appropriated by the Lessor for that purpose) any bicycle tricycle bath chair perambulator toy motor car or other vehicle

11. Not to deposit anything or throw any dust or beat any mat carpet or cloth on or in or allow children to play in or obstruct the user by the Lessor and all persons authorised by him of the entrance hall passages staircases or lifts

12. Not to remove from the Flat any cinders dust or rubbish except in a covered pail to be provided at the expense of the Tenant or if any person in the Flat shall suffer from a notifiable or other infectious disease without disinfecting the contents of the pail in such manner as the Lessor shall from time to time appoint

13. Not to reside or permit any other person to reside in the Flat unless the floors thereof (including the passages) are covered with carpet or felt or (in the bathroom lavatory and kitchen only) linoleum or sound absorbing tiles except while the same shall be removed for cleaning repairing or decorating the Flat or for some temporary purpose

14. Not to permit any dancing fencing or athletics in the Flat

15. Not to place flower pots or other things outside the windows of the Flat unless the same shall be securely fastened to the satisfaction of the Lessor

16. Not to use or permit the use of the lifts for the conveyance of luggage or by children (unless accompanied by an adult member of the Tenant's family) or by servants tradesmen or messengers

17. Not to permit coal coke or other solid fuel to be delivered at the Demised Premises after 11 a.m.

Omit if no back staircase.

[18. Not to carry up nor permit to be delivered to the Flat any solid fuel paraffin furniture or building materials except by the back staircase]

19. Not to place any advertisement or notice of any description in the windows or on the outside of the walls or door of the Flat but this provision shall not prevent the Tenant from having his name without notice of his profession or business painted outside the entrance door of the Flat.

The Second Schedule

The servant or servants of the Lessor shall:—

1. Every morning before 9 a.m. clean the entrance hall passages staircases and lifts throughout the Building (except such of the same as shall be within the flats and such passages staircases and lifts as do not lead to the flats)

Omit if not desired.

[2. Remove from the passageway immediately outside each flat not later than 9 a.m. and empty cleanse and return to each flat not later than 10 a.m. the rubbish pails hereinbefore referred to]

3. Remove from the passageway immediately outside each flat not later than 9 a.m. and fill with coal coke or other solid fuel from the cellar appertaining to such flat such coal scuttles as the tenant shall reasonably require

Omit if automatic time switches are installed.

[4. Attend to the lighting of the entrance hall and the staircases passageways and lifts leading to the flats. Back stair lights to be extinguished at 10.30 p.m. and front passageway and entrance hall lights to be turned low at 11 p.m.]

FORM 6

Agricultural tenancy agreement from year to year. Short form. Variation where woodlands as well as agricultural land is let (*a*).

(*Drafted by V. G. H. Hallett, Esq., of Lincoln's Inn*)

AN AGREEMENT [*Parties as in Form 1*]

WHEREBY IT IS AGREED as follows:

1. The Landlord lets and the Tenant takes ALL the property specified in the First Schedule hereto TOGETHER with the rights and privileges specified in the Second Schedule hereto EXCEPT AND RESERVING unto the Landlord the matters rights and privileges specified in the Third Schedule hereto FROM the date of this Agreement from year to year until the tenancy is determined at the end of the second or any subsequent year by either party giving to the other not less than 12 calendar months previous notice in writing for the purpose AT the yearly rent of £x to be paid by equal quarterly payments on the four usual quarter days in every year the first payment to be made on the —— next.

2. The Tenant hereby agrees with the Landlord as follows:

(1) To pay the said rent at the times and in manner aforesaid

(2) To pay and discharge all existing and future rates taxes duties charges assessments impositions and outgoings whatever now or at any time during the tenancy payable in respect of the property hereby demised or any part thereof or by the owner or occupier thereof (saving any deduction authorised by the

(*a*) Probably this form is as useful for regulating the rights of the parties as any of the more elaborate forms. But where a county or district has definite local customs, a fuller form of lease setting these out may be desirable.

The law relating to agricultural holdings is considered in Jackson's *Agricultural Holdings*, 10th ed., and Scammell's *Law of Agricultural Holdings*, 2nd ed. The Agricultural Holdings Act, 1948, leaves little room for a free contract in relation to the holding, and there is much to be said, therefore, for an agreement in the present form.

Income Tax Act, 1952, or any legislation amending or replacing that Act)

(3) Not to assign or underlet or part with or share the possession of the said property or any part thereof

(4) To allow the Landlord and all persons authorised by him to enter upon the said property at all reasonable times to inspect the state of repair and the condition thereof

(5) That probate of the will or letters of administration to the estate of [*name of original tenant*] will be obtained by his personal representative or representatives within one month of his death and that such representative or representatives will within fourteen days of the date of such probate or letters of administration give notice in writing to the Landlord of the death of the said [*name of original tenant*] (*b*)

3. The Landlord and the Tenant hereby agree with one another as follows:

(1) That the Landlord will manage and the Tenant will farm so much of the property hereby let as consists of agricultural land or woodlands in accordance with the rules of good estate management and the rules of good husbandry respectively And so that the provisions of Sections 10 and 11 of the Agriculture Act, 1947, shall apply for the purposes of this stipulation as though the expression "agricultural land" employed in that Act included woodlands (for whatever purpose used) and the word "husbandry" included forestry

(2) The Landlord shall have the rights and comply with the liabilities of a landlord and the Tenant shall have the rights and comply with the liabilities of a tenant set out in the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations, 1948 And so that for the purposes of this stipulation all buildings and parts of buildings whatever comprised in the property hereby let shall be deemed to be farm

(*b*) This agreement is desirable since notice to quit does not require the consent of the Minister to its operation where the *original* tenant has died within three months before the date of the giving of the notice to quit and it is stated in the notice that it is given by reason of the matter aforesaid: A.H.A., 1948, s. 24 (2) (g). For the position where there are two or more original tenants, see Agriculture (Miscellaneous Provisions) Act, 1954, s. 7.

buildings comprised in a holding to which the said Regulations apply

4. Provided always that if the rent hereby reserved or any part thereof shall be in arrear for 21 days after the same shall become due (whether formally demanded or not) or in the event of any breach of any of the agreements on the part of the Tenant herein contained or of his becoming bankrupt or having a receiving order made against him or entering into any composition or arrangement for the benefit of his creditors the Landlord may re-enter upon the property hereby let and enjoy the same thenceforth as if this Agreement had not been made

AS WITNESS, *etc.*

THE FIRST SCHEDULE

THE SECOND SCHEDULE

THE THIRD SCHEDULE

These three Schedules will define the parcels: see Clause 1.

FORM 7

Agricultural tenancy agreement for 1½ years—avoiding the Restrictions on the operation of Notices to quit contained in s. 24 of the Agricultural Holdings Act, 1948 (*a*).

(*Drafted by V. G. H. Hallett, Esq., of Lincoln's Inn*)

AN AGREEMENT [*Parties as in Form 1*]

WHEREBY IT IS AGREED as follows:

1. The Landlord lets and the Tenant takes ALL the property specified in the First Schedule hereto TOGETHER with the rights

(*a*) S. 24 of the Agricultural Holdings Act, 1948, can only apply where notice to quit is required to terminate the tenancy. Where the term is for two years or more, on its expiration it continues as a tenancy from year to year (s. 3 (1) of the 1948 Act), so that notice to quit is required to terminate the tenancy. If the term is for less than a year, s. 2 of the 1948 Act provides that it shall take effect as a tenancy from year to year, so that here notice to quit will also be required. But there appears to be nothing in the 1948 Act to prevent a term of one to two years terminating without any notice to quit being given. *Cf.* Jackson's *Agricultural Holdings*, 10th ed., p. 109, note (1).

and privileges specified in the Second Schedule hereto EXCEPT AND RESERVING unto the Landlord the matters rights and privileges specified in the Third Schedule hereto FOR a term of 18 months commencing on the date of this Agreement and ending on the —— day of —— 19— At the monthly rent of £—— payable in advance the first such payment to be made on the signing of this Agreement and subsequent payments to be made on the —— of each month

2–4. [*As in Previous Form omitting 2 (5)*]

AS WITNESS, *etc.*

[Schedules as in previous Form.]

FORM 8

Second Charge on Freehold Property deferring payment of interest until all capital has been repaid by instalments (*a*).

(*Drafted by Peter Elman, Esq., of the Middle Temple*)

THIS LEGAL CHARGE is made the —— day of —— 19— BETWEEN AB of *etc.* (hereinafter called "the Borrower" which

(*a*) This precedent is designed to meet the case where working-class property is charged by way of second mortgage and the repayment of principal is by small weekly instalments with interest calculated and collected at six-monthly intervals. Generally the mortgagor does not pay income tax at the standard rate and the tax on interest must therefore be deducted from the interest payment and accounted for by him to the revenue. It has been found that mortgage repayment instalments under a second mortgage are difficult to collect, and it frequently happens that the full amount of principal is never paid. Nevertheless, the mortgage has borne income tax on the interest element from the outset. Under this precedent, since interest is not due and payable until all the principal is repaid, the mortgagee will first get repayment of his principal in full without deduction of tax and then have his interest, tax on which will be deductible at the rate current at the date of the actual payment of interest. Provision is also made for capitalisation of interest but the provisions of the Moneylenders Acts should be borne in mind. The deferment of the payment of interest and the capitalisation of interest will result in increasing appreciably the gross amount of interest and the term of the mortgage.

expression shall where the context so permits also include the person or persons deriving title under him or entitled to redeem this security) of the one part and CD of *etc.* (hereinafter called "the Mortgagee" which expression shall where the context so permits also include the person or persons for the time being entitled to give a discharge for the moneys secured by this Legal Charge) of the other part

WHEREAS:—

(1) By a Mortgage (hereinafter called "the Prior Mortgage") dated the —— day of —— 19— and made between the Borrower of the one part and —— of the other part the property hereby charged was demised to the said —— for a term of —— years from the date thereof to secure the sum of £—— and interest thereby covenanted to be paid by the Borrower

(2) The Mortgagee has agreed with the Borrower to lend him the sum of £—— upon having the repayment thereof with interest as hereinafter mentioned secured in manner hereinafter appearing

Now in pursuance of the said agreement and in consideration of the sum of £—— now paid by the Mortgagee to the Borrower (the receipt whereof the Borrower hereby acknowledges) THIS DEED WITNESSETH as follows:—

1. The Borrower hereby covenants with the Mortgagee to pay to the Mortgagee on the —— day of —— 19— the said sum of £—— (hereinafter called "the principal sum") with interest thereon in the meantime at the rate of —— per cent. per annum

2. If and so long as the power of sale applicable hereto shall not have become exercisable in accordance with the provisions of clause 7 hereof and the Borrower shall pay to the Mortgagee the principal sum from the date hereof by equal weekly instalments of £—— each the first of such weekly instalments to be paid on the —— day of —— next hereafter until the whole of the principal sum is fully paid and shall then and thereafter pay to the Mortgagee the said interest at the rate aforesaid which has in the meantime accumulated upon the principal sum or has otherwise accrued hereunder by such equal weekly instalments as aforesaid until the same is fully

paid then the Mortgagee shall not call in or require payment of the principal sum with interest thereon as aforesaid or the accumulated or accrued interest or any part thereof except by such weekly instalments

PROVIDED NEVERTHELESS (a) that during such time as the said interest upon the principal sum shall not be due and payable and shall accumulate hereunder the same shall be capitalised at intervals of —— calendar months from the date hereof and shall thenceforth bear interest at the rate aforesaid until the principal sum shall be fully paid as aforesaid, and (b) that notwithstanding the provision hereinbefore contained for the payment by instalments of the principal sum such principal sum with interest thereon as aforesaid shall in favour of a purchaser but not otherwise for all purposes of the exercise of all the powers of sale hereunder and otherwise be deemed to become due on the said —— day of ——.

3. The Borrower as Beneficial Owner hereby charges by way of legal charge ALL THAT [*parcels of the property*] with payment to the Mortgagee of the principal sum interest and other money hereby covenanted to be paid by the Borrower subject to the Prior Mortgage and the said sum of £—— and interest thereby secured.

4. The Borrower hereby covenants with the Mortgagee at all times during the continuance of this security to keep the property hereby secured in good and substantial repair and condition and also insured against loss or damage by fire in accordance with the covenants in that behalf contained in the Prior Mortgage and from time to time duly and punctually to pay the premiums and other moneys necessary for effecting and keeping up such insurance and on demand produce to the Mortgagee the policy of insurance and the receipts for all such payments or otherwise satisfy the Mortgagee that such insurance is kept on foot PROVIDED THAT if the Borrower shall make default in keeping in repair or insured as aforesaid the said property or in producing the said policy or receipts or satisfying the Mortgagee as aforesaid then and in every such case the Mortgagee shall be at liberty to enter upon the said property without being liable as a mortgagee in possession to effect any repairs which the

Mortgagee may deem necessary or to insure and keep insured the said property and all moneys expended by the Mortgagee under the power herein contained shall be deemed to have been properly paid by the Mortgagee hereunder

5. The Borrower hereby further covenants with the Mortgagee that the Borrower will not during the continuance of this security without the previous consent of the Mortgagee register or cause or permit to be registered under the Land Registration Acts, 1925–1936 or any amendment or re-enactment thereof for the time being in force any person or persons as proprietor or proprietors of the property hereby secured or any part thereof and the costs incurred at any time by the Mortgagee of entering a caution against registration or of registering (after the power of sale applicable hereto has arisen) the Mortgagee as proprietor shall be deemed to have been properly incurred by the Mortgagee hereunder

6. During the continuance of this security the Borrower shall not without the previous consent in writing of the Mortgagee grant or agree to grant any lease or tenancy or part with or share the possession or occupation of the property hereby secured or any part thereof or accept or agree to accept a surrender of any lease or tenancy thereof

7. As between the Borrower and the Mortgagee the statutory power of sale in respect of the security hereby created shall become exercisable only on the happening of any one of the following events namely

(a) If the Borrower shall become bankrupt or commit any act of bankruptcy or if he shall make or enter into any arrangement or composition for the benefit of his creditors or any of them or any execution is issued against him or

(b) If a receiver of the property hereby secured shall be appointed or

(c) If any interest secured by the Prior Mortgage shall be in arrears and unpaid for —— days after the same ought to have been paid or

(d) If the Borrower shall fail to produce to the Mortgagee on demand the receipt of the payment of any interest secured by the Prior Mortgage

(e) If any proceedings shall be commenced by any person in whom the Prior Mortgage is for the time being vested for the purpose of enforcing his security or

(f) If the Borrower shall at any time make default in payment of any of the weekly instalments whether of the principal sum or the accumulated or accrued interest hereunder for the space of one month after the same has become due and payable or

(g) If the Borrower shall at any time fail or neglect to perform any covenant on his part herein contained or implied

PROVIDED that on the happening of any such event as aforesaid the power of sale hereunder shall become immediately exercisable by the Mortgagee without the necessity of giving any notice in that behalf to the borrower PROVIDED also that any sale in pursuance of the exercise of the power of sale hereunder may be made either subject to or discharged from the Prior Mortgage or upon any terms of indemnity against the same which the Mortgagee may think fit with power to settle and pass the accounts of any person in whom the Prior Mortgage is for the time being vested and any accounts so settled and passed shall as between the Mortgagee and the Borrower be deemed to be properly settled and passed and be binding on the Borrower accordingly Provided also that a purchaser shall not be concerned to see or inquire whether a case has arisen under this clause for the exercise of the power of sale applicable hereto

8. The Borrower will on demand repay to the Mortgagee all costs charges and expenses properly incurred hereunder by the Mortgagee together with interest thereon at the rate aforesaid from the date or dates on which the same shall have been respectively incurred and until so repaid shall be charged upon the property hereby charged and shall be added to the principal sum and the interest thereon whether accumulated or accrued at the rate aforesaid shall be payable in accordance with the provisions relating to the payment of interest hereunder

9. The restriction on the consolidation of mortgages imposed by section 93 of the Law of Property Act, 1925 shall not apply to this security

10. The Borrower hereby attorns and becomes tenant at will to the Mortgagee during the continuance of this security at the yearly rent of a peppercorn if demanded but not to be recoverable by distress but so nevertheless that the Mortgagee may at any time without notice enter on and take possession of the premises and determine the tenancy hereby created PROVIDED that nothing in this clause contained shall render the Mortgagee liable to account as mortgagee in possession

IN WITNESS, *etc.*

FORM 9

Statutory Declaration to establish that no severance in equity of a joint tenancy ever took place (*a*).

(*Drafted by Ernest H. Scamell, Esq., of Lincoln's Inn*)

I —— —— of —— in the County of —— do solemnly and sincerely declare as follows:—

1. I AM —— years of age and the [eldest] daughter of AB deceased (hereinafter called "my Father") and CD deceased (hereinafter called "my Mother")

2. For upwards of —— years before the death of my Mother I had understood and known that my Mother and my Father were beneficially entitled as joint tenants to the fee simple of the property known as —— in the County of —— (hereinafter called "the Property")

3. I verily believe and have always understood that during the joint lives of my Mother and my Father neither my Mother nor my Father made or purported to make any assignment release charge mortgage declaration of trust or other dealing of any kind of or relating to her or his beneficial interest in the Property or any part thereof or in the notional proceeds of sale

(*a*) Where title is traced through the survivor of joint tenants, a recital in a conveyance to the effect that no severance in fact took place is normally considered sufficient but where, for some reason, doubts arise, a statutory declaration seems to be called for.

thereof or gave any notice of severance of the joint tenancy or did or suffered any other act or thing which could or might have effected a severance of the joint tenancy in equity

4. After my Mother's death I, as the duly appointed executor of my Mother's Will, duly administered her estate on the footing that on her death her beneficial interest in the Property and in the notional proceeds of sale thereof had determined and no objection or claim has ever been made by any person in respect thereof

5. After the death of my Father the entire beneficial interest in the Property and in the notional proceeds of sale thereof was treated and dealt with by EF and myself, the duly appointed executors of my Father's Will, as part of my Father's estate

6. From the date of my Father's death and until the execution of a Conveyance made on the —— day of —— 19— BETWEEN GH of the first part the said EF of the second part and myself of the third part the beneficiaries named in my Father's Will being all the parties to the said Conveyance had at all times been in full and free beneficial enjoyment of the rents and profits of the Property as tenants in common without interruption

7. From and after the execution of the said Conveyance I the grantee named therein, have been and remain in full and free possession and enjoyment of the Property

8. I DEPOSE as above from knowledge acquired as the daughter of my Mother and Father as stated in paragraph 1 hereof and as having acted as the sole executor of my Mother's Will and a co-executor of my Father's Will and as one of the beneficiaries entitled under the Will of my Father [and the Will of my Mother] and as the grantee under the said Conveyance

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835

DECLARED AT, *etc.*

FORM 10

Will of widower leaving his residuary estate to his children for life and then to their children; provision for children of deceased children to take the share which the deceased parent would have taken and for payment of share to any daughter past child bearing age (*a*).

(*Drafted by E. O. Walford, Esq.*, LL.D., *Solicitor*)

I —— OF —— hereby revoke all wills and testamentary dispositions made by me and declare that this is my last Will

1. I appoint —— of —— and —— of —— (hereinafter called "my Trustees") to be the Executors and Trustees of this my Will

Appointment of Executors and Trustees.

2. I give all my real and personal estate whatsoever and wheresoever (including any property over which I have a general power of appointment or disposition) to my Trustees upon trust to sell call in and convert into money all such parts thereof as shall not consist of money or of investments hereinafter authorised with power in their absolute discretion to postpone such sale calling in or conversion as to all or any part of my estate as they shall in their absolute discretion think fit and to pay my debts funeral and testamentary expenses and all death duties payable in respect of my estate upon my death out of my ready moneys and the net proceeds of the said sale calling in and conversion

Gift to Trustees upon trust for sale.

3. My Trustees shall stand possessed of such investments and of any part of my estate for the time being unconverted upon the following trusts:—

Trusts of proceeds of sale.

(1) To divide the same notionally into as many equal shares as there shall be children of mine living at my death or who shall have predeceased me leaving a child or children living at my death one such share to be appropriated to each such living child of mine and one such share to be appropriated to the child or children (and equally between them if more than one) living at my death of each such deceased child of

(*a*) As to this form see the article at p. 205, *ante*.

mine as aforesaid And I expressly declare that the foregoing direction as to division and appropriation shall not be deemed under any rule of construction or otherwise to confer upon any child or grandchild of mine any absolute or other beneficial interest in any such share or part of a share my intention being that the destination thereof and beneficial interest therein under this my will shall be governed exclusively by the trusts and provisions affecting the same hereinafter declared (*b*)

As to shares appropriated to children of testator living at his death.

(2) As to the share appropriated to each child of mine living at my death my Trustees shall hold the same—

(i) Upon trust to pay the income of such share to him or her during his or her life

(ii) After the death of such child to hold such share as to both capital and income upon trust for the child or children of such child who shall attain or shall have attained the age of 21 [or being female shall have attained or shall attain that age or have married or shall marry under that age] (*c*) and if more than one then equally between them

(iii) If upon or at any time after the death of such child of mine living at my death there shall not be any child (whether then living or deceased) of such child of mine who has attained a vested interest in the capital of the share appropriated to such child of mine nor any other child then living of such child of mine then the income of the share so appropriated (hereinafter called "the lapsed share") shall accrue and be paid to such of the children of mine (*d*) as shall from time to time be living and if and so long as more than one is still living then equally between them And upon the death

(*b*) It is established by numerous decisions that a mere declaration that the shares should not vest absolutely but should be retained by trustees upon the trusts thereinafter declared would not be sufficient to negative the rule of construction that where shares are appropriated to certain persons, as above, the mere appropriation is sufficient to confer on those persons absolute interests if the trusts subsequently declared fail. Hence, the express negation of that rule of construction: see the article at p. 205, *ante*.

(*c*) The testator may, however, wish to give a power of appointment to his children in favour of issue or a spouse.

(*d*) It may be desired that the children of deceased children shall also share in this income or even that they shall be the sole persons to benefit from it.

of the last survivor of my children the lapsed share (together with any other share or part of a share accruing thereto under this present provision) shall as to both capital and income accrue and be added to and equally between the other shares hereinbefore appropriated to my children and grandchildren in respect whereof the trusts as hereinbefore and hereinafter declared shall not have failed and shall be held upon the trusts and subject to the provisions from time to time applicable to such other shares and so that the foregoing provision for accruer of lapsed shares shall be applicable to any share the trusts whereof shall fail after any accretion thereto under the foregoing provision in that behalf and to any share or part of a share constituting such an accretion (*e*) [Provided that for the purpose of the foregoing provisions as to lapsed shares any daughter of mine who shall have become entitled under the provision for childless daughters hereinafter contained to the capital and income of the share appropriated to her shall be entitled under the foregoing provision to a share of the income of any lapsed share during her lifetime but not to any part of the capital of any lapsed share] (*f*)

As to shares appropriated to children of deceased children of the testator.

(3) (i) As to each share appropriated to the child or children of any child of mine who has predeceased me leaving a child or children living at my death and who have attained or shall attain the age of 21 years [or being female shall have attained or shall attain that age or have married or shall marry under that age] upon trust for such child or children so attaining the age of 21 [or being female attaining that age or marrying under that age] as to both capital and income and if more than one then equally between them (*g*)

(*e*) Although this may be the position even in the absence of this provision, it has been thought desirable to make it clear that, if after accruer to any share the trusts of the original share fail, then there is to be a further reshuffle, the original share and any accretion thereto going over to the other shares of which the trusts have not failed.

(*f*) See clause 3 (4). This proviso must be deleted if clause 3 (4) is not required. The last thirteen words are not necessary as the trusts of the "childless daughters" shares will fail when they die, so no accrued capital is possible.

(*g*) The matters of maintenance and advancement are left to be dealt with under the statutory provisions in that behalf; but specific powers can be inserted if desired.

(ii) If there shall be no grandchild of mine who attains a vested interest in such share under the last preceding trust then such share (together with any other share or part of a share accruing thereto under this present provision) shall as to both capital and income accrue and be added to and equally between such of the other shares appropriated to my children and to the child or children of any deceased child of mine in respect whereof the trusts hereinbefore declared shall not have failed and shall be held upon the trusts and subject to the provisions from time to time applicable to such other shares and so that the foregoing provision for accruer shall be applicable to any share the trusts whereof shall fail after any accretion thereto under the foregoing provision in that behalf and to any share or part of a share constituting such an accretion (*h*) [Provided that for the purpose of the foregoing provision as to accruer any daughter of mine who shall have become entitled under the provision for childless daughters hereinafter contained (*j*) to the capital and income of the share appropriated to her shall be entitled during her lifetime under the foregoing provision to a share of the income of any share accruing under such provision but not to any part of the capital of any such share so accruing]

(4) (i) The following provision is the provision for childless daughters hereinbefore mentioned

Provision as to shares appropriated to daughters who have no children.

(ii) Notwithstanding the trusts hereinbefore declared I expressly declare that if at any time any daughter of mine then living shall have attained the age of [50] and if there shall be no child of such daughter then living and no deceased child of such daughter who had attained a vested interest in the share appropriated to such daughter of mine then my Trustees shall hold that share upon trust for such daughter of mine as to both capital and income For the purpose of avoiding doubt I declare that neither the capital nor any part of the capital of any of the other appropriated shares shall accrue to the share of any daughter of mine who has become entitled

(*h*) See footnote (*d*), *ante*.
(*j*) See clause 3 (4).

to the capital of the share appropriated to her under the foregoing provision and if any other appropriated share or part of such share has previously accrued to such daughter's share the provisions hereinbefore contained as to accruer shall be applicable to such accrued share or part of such share after her death (*k*) to the intent that any such share or part of such share so accruing to such daughter's share shall after her death go and accrue to the other shares appropriated to my children and grandchildren the trusts whereof shall not have failed and equally between such shares and shall be held upon the trusts and subject to the provisions from time to time applicable thereto

(iii) My Trustees may act for the purposes of this clause on such information as they may think fit and shall not be liable to any person entitled to any interest in any part of my estate for any loss sustained by such person if that information proves to be incorrect

4. As to any of the shares appropriated to my said children and grandchildren in respect whereof the foregoing trusts and provisions shall fail or to which such trusts and provisions shall not extend my Trustees shall hold the same upon trust as to both capital and income for —— (*l*) and —— or such of them as shall then be living or if both of them shall then be dead then for ——

[5. Investment clause]

[6. All income of property producing income to be treated as such even if not derived from authorised investments]

[7. Power to act on counsel's opinion]

(*k*) The words which follow may be unnecessary, but the form is somewhat complex and it is thought that a certain degree of repetition is not undesirable if it clarifies the intention.

(*l*) It is very important that the testator should be asked what provision he desires to make for the destination of his estate if there are no grandchildren who live to attain vested interests. As explained in a previous footnote to this form there will be no implied vesting in the testator's children of the shares appropriated to them. If the trusts fail there will therefore be an intestacy in respect of the shares. Under that intestacy the estates of the testator's children will, no doubt, take a substantial interest if not the whole of the testator's estate.

[8. Solicitor's charging clause to be invoked even if no solicitor is appointed an Executor and Trustee of the Will]

IN WITNESS WHEREOF I have hereunto set my hand this —— day of —— 19—

Signed by the above named Testator in our joint presence and then by us in his presence (*m*)

FORM 11

Forestry Lease (*a*).

(*Drafted by Ernest H. Scamell, Esq., of Lincoln's Inn*)

THIS LEASE made the —— day of —— 19— BETWEEN *AB* of *etc.* (hereinafter called "the Lessor") of the one part and THE MINISTER OF AGRICULTURE, FISHERIES AND FOOD acting in exercise of the powers conferred by the Forestry Act, 1945 (hereinafter called "the Minister") of the other part

WITNESSETH as follows:—

1. IN consideration of the sum of £—— now paid by the Minister to the Lessor (the receipt whereof the Lessor hereby acknowledges) in respect of the standing timber on the land coloured brown on the plan hereinafter referred to and of the rent hereinafter reserved and of the covenants and conditions hereinafter contained and on the part of the Minister to be paid observed and performed the Lessor hereby demises unto the Minister ALL AND SINGULAR the pieces or parcels of land and property short particulars whereof are contained in the Schedule hereto and all which property is for the purpose of identification (but not otherwise) delineated on the plan

(*m*) Some practitioners may prefer to use one of the more lengthy forms of attestation clause; but this short form complies with the Wills Act, 1837, and is accepted by the Probate Registry as sufficient.

(*a*) This form is based upon an actual lease approved on behalf of the Minister of Agriculture, Fisheries and Food.

annexed hereto and thereon coloured pink brown and blue (hereinafter called "the said property") TOGETHER with the following rights namely

(1) Rights of way at all times and for all purposes to and from the said property along the roads or tracks coloured yellow on the said plan (with the right to make up the surface of such roads or tracks for such purposes) subject to the payment of the whole or a proportion of the expenses of maintaining and keeping such roads or tracks in good repair as follows that is to say (a) all expenses of making good any damage occasioned by the Minister's user thereof or that of his servants agents or contractors (fair wear and tear excepted) (b) one third of the expenses of maintaining in the ordinary course of maintenance the road or track between the points marked A and B on the said plan (c) one half of the expenses of maintaining in the ordinary course of maintenance the road or track between the points marked B and C on the said plan

(2) The right (but subject to the reservation of timber hereinafter contained) to cut fell and convert to his own use such of the timber trees saplings pollards and plantations now or at any time during the term growing upon the said property as it may be proper to cut in the ordinary course of husbandry and management of the said property and to sell the same before or after cutting or felling

(3) The right to erect and maintain upon the said property such dwelling-house or dwelling-houses not exceeding six in number as the Minister may require for the provision of accommodation for the Minister's employees subject to the Minister at his own expense first submitting to the Lessor or its agent the plans elevations and specifications for such dwelling-house or dwelling-houses for the Lessor's approval and subject to such approval (which approval shall not be unreasonably withheld)

(4) The right (but subject nevertheless to any other provisions of this Lease) to carry out on the said property all works usual or necessary for purposes connected with forestry

(5) The right for the Minister to win and get out of the said property all such stone sand gravel and other road materials

as he may require for the construction and maintenance of roads and tracks upon the said property and of the roads or tracks coloured brown on the said plan

EXCEPT AND RESERVED unto the Lessor the following rights namely

(1) (Subject to the provisions of the Ground Game Act 1880 the Ground Game (Amendment) Act 1906 and the Agricultural Holdings Act 1948 and to the right (except in so far as the Lessor has previously granted the same by a lease dated the —— day of —— 19— and made BETWEEN the Lessor of the one part and XY Limited of the other part) of the Minister to keep down kill and carry away black game and squirrels and to kill wood pigeons and with the consent in writing of the Lessor to shoot deer) The exclusive right for the Lessor and all others authorised by him in writing of entering the said property and of sporting thereon by shooting fishing taking destroying killing and carrying away all and all manner of game including snipe woodcock hares rabbits wild fowl quails plover wood pigeons and landrail and of feeding rearing and preserving the same

(2) (Subject to the right hereinbefore granted to the Minister to win and get out of the said property all such stone sand gravel and other road materials as are hereinbefore referred to) all mines and minerals in or under the said property or any part or parts thereof with liberty for the Lessor and the Lessor's lessees or licensees and his and their agents and servants to dig get and carry away the same but by underground workings only and making compensation for any damage done thereby and without entering upon or in any manner affecting or exercising any rights or powers whatsoever in or over the surface of the said property

(3) The right to fell all the timber trees saplings pollards and plantations (hereinafter in this clause referred to as "timber") on such parts of the said property as are coloured pink and blue on the said plan and to remove the same by means of such roads rides tracks and paths on the said property as shall be indicated by the Minister Provided always that (a) in the case of the land coloured pink on the

said plan such right shall absolutely cease and determine on the fifth anniversary of the date of these presents whether the timber shall have been then felled or not and any timber poles or logs not removed by the said anniversary shall belong to the Minister (b) in the case of the land coloured blue on the said plan such right as aforesaid shall absolutely cease and determine on the fifteenth anniversary of the date of these presents whether the timber shall have been then felled or not and any timber poles or logs not removed by the said anniversary shall belong to the Minister (c) if any licence or licences necessary to enable the Lessor to proceed with the felling of the timber shall not be granted by the end of the respective periods of five and fifteen years aforesaid then (subject to the Lessor having made every effort to obtain such licence or licences) the said respective periods of five and fifteen years or either of such periods shall be extended until such time after the date when such licence shall have been obtained as may be agreed between the Lessor and the Minister to be reasonably necessary to complete the felling and removal of the timber or in default of agreement as may be determined by an arbitrator to be appointed as hereinafter provided (d) subject as hereinafter provided during the respective periods of five and fifteen years or such extended period or periods aforesaid the yearly rent hereinafter reserved shall abate or be reduced by the amount of —— for every acre or part of an acre of the land coloured pink and blue respectively on the said plan as shall continue to be subject to the reservation contained in this clause Provided that when the Lessor in pursuance of the reservation contained in this clause shall have felled and cleared all the timber and cleared or burnt all lop and top of such timber over an area of land of not less than one acre and shall have given notice in writing thereof to the Minister (unless the Minister shall waive the right to such notice) the rights hereby reserved and the said provisions for an abatement or reduction in the amount of the said rent shall determine and cease to apply in respect of any such area of land

(4) The right of way for all purposes for the Lessor and all persons authorised by him and either with or without animals or vehicles over such of the roads rides and tracks coloured blue on the said plan as are included in the demise hereby made or over such other roads rides and tracks as shall hereafter be substituted therefor but so that no unnecessary damage shall be caused thereby

(5) The right for all purposes for the Lessor and all persons authorised by him to walk or ride along such of the rides as are included in the demise hereby made or over such other rides as shall hereafter be substituted therefor but so that no unnecessary damage shall be caused thereby

(6) All springs wells ponds streams and watercourses with all fish therein with power for the Lessor and his agents with or without engineers surveyors workmen or other persons at all reasonable times during the term hereby granted to enter upon the said property and to inspect examine and carry out and work upon any and every existing or future water installation and water supply pipes and to undertake operations for the purpose of harnessing and of taking and carrying away water from such springs wells ponds streams and watercourses as the Lessor shall think fit

(7) The right for the Lessor and his tenants to enter upon the said property for the purpose of taking and carrying away water from any of the springs wells ponds streams and watercourses included in the demise hereby made

(8) The right of the Lessor to an easement of fence over or in respect of such of the fences included within the demise hereby made or as shall be hereafter substituted therefor and such additional fences as the Minister may for the time being be under an obligation to maintain under any of the provisions hereinafter contained and as are beneficial to and accommodate any of the surrounding land retained by the Lessor

TO HOLD the same unto the Minister from the date hereof for the term of nine hundred and ninety-nine years PAYING therefor during the said term the yearly rent of £—— clear of all deductions (except Landlord's Property Tax Tithe Redemption Annuity and Owner's Drainage Rates) by yearly payments on the ——

day of —— in each year of the said term the first payment of such rent to be made on the —— day of —— next following the date hereof and to be a proportionate amount in respect of the period from the date hereof to such date for the first payment of rent

2. The Minister hereby COVENANTS with the Lessor as follows:—

(1) To pay the rent hereby reserved at the times and in the manner aforesaid subject nevertheless to any abatement or reduction to which the Minister may for the time being be entitled under the provisions hereinbefore contained

(2) EXCEPT as hereinafter provided to pay or discharge or indemnify the Lessor against payment of all rates taxes duties charges assessments impositions and outgoings whether imposed by statute or otherwise and whether of a national or local character and whether of the nature of capital or revenue and even though of a wholly novel character (including any sum payable as a result of this demise for the redemption of land tax) which now are or hereafter shall be rated charged assessed or imposed on the property hereby demised in so far as the same shall remain in the possession of the Minister or on the Landlord or Tenant in respect thereof (Landlord's Property Tax Tithe Redemption Annuity and Owner's Drainage Rates excepted)

(3) In and during the term hereby granted and except for the fences adjoining the property known as —— to keep all existing fences whether boundary fences or otherwise with all gates therein in proper order and condition and to renew or replace the said fences and gates as and when the same shall require renewal or replacement

(4) To erect and forever thereafter during the continuance of the term hereby granted to maintain in proper order and condition a stock fence along the dotted lines marked T on the said plan but only between the points RS ST and XY as shown on the said plan so as to keep the cattle sheep and other animals of the occupiers of any adjoining lands from breaking into the said property

(5) Not without the previous consent in writing of the

Lessor to alter the course or reduce the flow of any rivers ponds streams springs or watercourses included in the demise hereby made or to pollute the waters thereof

(6) Not to erect any building whatsoever on the property hereby demised except the dwelling-house or dwelling-houses not exceeding six in number hereinbefore mentioned of which the plans elevations and specifications shall have been submitted to and approved in writing by the Lessor (or his agent) (such approval not to be unreasonably withheld)

(7) Not to alter any existing or future buildings on the said property without the previous consent in writing of the Lessor

(8) Not to assign underlet or part with the possession of the whole or any part of the said property except dwelling-houses to the Minister's servants and labourers employed in connection with the management of the said property without the previous consent in writing of the Lessor

(9) At all times during the term hereby granted to keep and maintain all existing and future messuages cottages and buildings on the said property in good tenantable repair and condition and to rebuild the same as the necessity shall arise

(10) To keep all roads tracks rides fences bridges drains ponds drinking places and watercourses on the said property in a good and proper state of repair and condition and to cut cleanse scour and keep at a sufficient width and depth all ditches drains and watercourses and to keep in repair and cleanse the mouth of all outfalls and underdrains including all eaves gutters and stack pipes of all buildings

(11) To pay to the Lessor within two months after ascertainment of the amount thereof all sums subject to the payment of which the rights of way along the roads or tracks coloured yellow on the said plan hereinbefore referred to are exercisable

(12) Subject to the reservations in favour of the Lessor hereinbefore contained to undertake on the said property a reasonable scheme or schemes of afforestation and carry out such scheme or schemes and generally manage the said property according to the best practice and rules of good cultivation and

management known in the district wherein the said property is situate

3. The Lessor hereby covenants with the Minister as follows:—

(1) To pay or indemnify the Minister against Landlord's Property Tax Tithe Redemption Annuity and Owner's Drainage Rates

(2) That the Minister paying observing and performing on his part the rent covenants and conditions herein reserved and contained shall hold the said property during the said term without any lawful eviction or interruption by the Lessor or any person claiming under or in trust for him

(3) That the Lessor will from time to time with all reasonable speed burn or clear away the lop and top of all trees felled by him pursuant to the reservation in that behalf hereinbefore contained and will not later than one month after the end of any period during which any timber or trees are so reserved or such later date as may be agreed or determined as hereinbefore mentioned clear the said parts of the said property coloured pink and blue on the said plan and will thereby do or cause no unnecessary damage to the said property or to any timber trees underwood or new planting thereon

(4) To allow the Minister the following yearly abatements or reductions of the rent hereby reserved that is to say during the subsistence of any rights in respect of timber trees saplings pollards or plantations hereby reserved to the Lessor then in respect of such parts of the said property as are from time to time affected thereby an abatement or reduction of the said rent at the rate of —— for every acre or part of an acre of the land so affected

(5) To pay all such rates taxes assessments and outgoings in respect of the rights hereby reserved and also in respect of any part of the said property over which for the time being rights in respect of timber may be reserved to the Lessor as would otherwise be payable by the Minister under his covenant in that behalf herein contained

4. IT IS HEREBY agreed and declared as follows:—

(1) IF the rent hereby reserved or any part thereof shall

be unpaid for twenty-one days next after the same shall have become due whether lawfully demanded or not or if the Minister shall not observe and perform the covenants stipulations and conditions herein contained and on his part to be observed and performed THEN it shall be lawful for the Lessor to re-enter upon the said property or any part thereof in the name of the whole and thereupon this Lease shall determine but without prejudice to any right of action or other remedy which may have accrued or arisen to the Lessor prior to such re-entry

(2) If any dispute or difference shall arise under out of or in connection with the Lease (including the construction thereof) the same shall be referred to the decision of a sole arbitrator to be nominated in default of agreement by the President for the time being of the Royal Institution of Chartered Surveyors subject to and in accordance with the Arbitration Act, 1950, or any statutory re-enactment or modification thereof

(3) Where the context so admits the expression "the Lessor" shall include the person for the time being entitled to the reversion immediately expectant on the term hereby granted and the expression "the Minister" shall so long as the said term is vested in him include the Forestry Commissioners and such other persons as may for the time being be entitled by law to the management and direction of the demised premises or any part thereof and thereafter such expression shall include the Minister's successors in title

(4) A receipt for rent shall not be a discharge for any money which became due or payable for any breach of any of the covenants stipulations and conditions herein contained unless in such receipt it shall be so expressed

[5. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value of the aggregate amount or value of the consideration other than the rent exceeds £——]

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

FORM 12

Licence to park a caravan in a field used for this purpose with Rules as to conduct of the caravan owners.

(*Drafted by Peter Elman, Esq.*, M.A., *of Middle Temple*)

THIS LICENCE is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Owner") of the one part and —— of —— (hereinafter called "the Licensee") of the other part

WHEREBY IT IS AGREED AND DECLARED as follows:—

1. Subject as hereinafter contained the Owner will permit the Licensee

(a) to enter upon ALL that (*parcels*) (hereinafter called "the Parking Field") and to park and keep parked thereon a motor vehicle registration number —— together with a trailer caravan —— feet in length —— feet in width and —— feet in height (which motor vehicle and trailer caravan are hereinafter together called "the Caravan") and to reside with his immediate family in the Caravan and for that purpose only to have the necessary use of the site as pegged out on the Parking Field and known as Site No. —— or such other site thereon as may be available at the commencement of this Licence or as the Owner may from time to time during the continuance of this Licence in writing request the Licensee to park the Caravan (hereinafter called "the Site") and

(b) for the purpose of the use and convenience incidental to the parking of the Caravan but not further or otherwise and in common with all other persons having a like right to go pass and repass over and along the roads and paths on the Parking Field

2. This Licence shall endure for a period of —— weeks from the —— day of —— 19— until the —— day of —— 19— unless sooner determined in accordance with the provisions hereof

3. During the continuance of this Licence the Licensee shall pay to the Owner a licence fee at the rate of £—— a week payable in advance on the —— day of each week

4. The Owner and Licensee hereby agree and declare as follows:—

(a) that it is not the intention of either of them to create between them the relation of landlord and tenant

(b) that legal possession and control of the Parking Field and the Site shall at all times remain vested in the Owner and the Licensee shall not hereby acquire any estate or interest therein

(c) that the Licensee shall not be entitled to use the Parking Field or the Site to the exclusion of the Owner or others authorised by him and

(d) that this Licence shall not in any way confer or impose upon either of them any of the rights or obligations of a landlord or tenant or any other rights or obligations save those expressed or implied by law in this Licence

5. The Licensee hereby agrees and undertakes with the Owner as follows:—

(a) To exercise his rights and liberties hereunder in a proper peaceful and seemly manner

(b) to keep and maintain the Site and each part thereof in clean wholesome and tidy condition and free from any offensive or noisome matter or thing

(c) Not to do or cause or permit to be done any act or thing on about or near the Site which may be or become a nuisance or inconvenience or cause damage or annoyance to the Owner his tenants or other licensees of the Parking Field or other persons whomsoever or which may infringe any statutory rule order or other regulation for the time being in force

(d) Not to do or bring or cause or permit to be done or brought any act matter or thing upon the Site or Parking Field or any part thereof by reason or in consequence of which the rights of the Owners under any policy of insurance in respect of the Parking Field would or might be prejudicially affected

(e) Not to break tread down or otherwise damage any banks

hedges fences or gates or other fixtures structures or installations whatsoever in or upon the Parking Field or cause or permit the same to be done and to make good to the satisfaction of the Owner or pay reasonable compensation for any such breaking treading down or other damage

(f) Not to erect any hut shed or other erection on the Site or any part thereof

(g) Not to obstruct in any way nor to cause or permit any person or persons or children under his control to obstruct the roads and paths on the Parking Field or any part of them

(h) To abide by and keep the rules and regulations set out in the Schedule hereto or any reasonable modifications thereof or additions thereto from time to time made by the Owner for the good conduct and management of the Parking Field and for the convenience and comfort of the licensees or other the occupiers of the Parking Field generally and notified in writing to the Licensee

6. The Licensee hereby further agrees and undertakes with the Owner to indemnify and keep the Owner indemnified for and against all actions proceedings and claims by third parties in respect of any damage or liability caused by or arising from the wilful act neglect or default of the Licensee or any member of his family living with him in the Caravan or any other person who might be on the Site or the Parking Field at the invitation express or implied of the Licensee

7. Without prejudice to the general right of the Owner to enter upon and control the Site and the Parking Field the Owner or his agent or any other person authorised by him may at any time and from time to time inspect the Site and all matters or things thereon for the purpose of ascertaining whether all or any of the provisions of this Licence is or are being faithfully kept observed and performed and the Licensee shall forthwith remedy any breach thereof upon being required so to do

8. This Licence is personal to the Licensee and shall not be assignable

9. On the determination of this Licence howsoever occasioned the Licensee shall deliver up the Site in good clean and tidy condition

10. This Licence shall be voidable at the option of the Owner and all the rights of the Licensee hereunder shall cease if at any time during the said period the Licensee shall

(a) refuse or neglect to pay the said licence fee as and when the same becomes due and payable or

(b) fail to observe and perform any of the agreements and undertakings herein on his part (including any of the said rules and regulations)

And in any such event the Owner may (but without prejudice to any right in respect of any antecedent breach by the Licensee of any of the provisions hereunder) give the Licensee —— days' notice in writing to vacate the Site and the Parking Field either addressed and posted to the Licensee or by the leaving the same on the Site or any part thereof or in or upon the Caravan and upon the expiration of such notice the Licensee shall forthwith vacate the Site and the Parking Field and remove the Caravan and all other things belonging to the Licensee

AS WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

Rules and Regulations

1. No gramophone wireless loudspeaker violin or other musical instrument of any kind shall be used or played between the hours of —— p.m. and —— a.m. nor shall the same be used or played at any other time so as to cause a nuisance or annoyance to any of the other occupiers or licensees of the Parking Field.

2. No nuisance or annoyance shall be caused to the occupiers or licensees of the Parking Field by unreasonable or noisy running of engines or the sounding of hooters or horns or other undue noise.

3. No bird dog or other animal shall be kept or permitted to be kept on the Site or Parking Field which shall be a nuisance or annoyance to any of the other occupiers or licensees of the Parking Field or which after the keeping thereof shall have been objected to by the Owner by notice in writing given to the Licensee or left for the Licensee in or upon the Site or Caravan.

4. No wearing apparel or domestic linen or washing shall be exposed and no mats shall be shaken in or upon the Site or the Parking Field or any part thereof after —— a.m. on any day.

5. No boxes parcels refuse or any other article or rubbish shall be kept exposed upon the Site at the Parking Field or any part thereof.

6. No inflammable or explosive oil or other substance shall be kept on the Site except in quantities reasonable for normal domestic use.

7. All refuse ash and other rubbish shall with all reasonable dispatch be placed in the receptacles or containers provided for that purpose in or upon the Parking Field.

8. All taps sinks lavatories cisterns latrines and all other sanitary equipment and installations in or upon the Parking Field whether or not for use in common by all the occupiers or licensees thereof shall be used in a proper clean and orderly manner.

FORM 13

Agreement for a loan secured by deposit of shares in a private company and a blank transfer

(Drafted by Peter Elman, Esq., M.A., of Middle Temple)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN —— of —— (hereinafter called "the Borrower") of the one part and —— of —— (hereinafter called "the Lender") of the other part

WHEREAS:—

(1) The Lender has agreed to advance to the Borrower the sum of £—— upon having the repayment thereof with interest thereon secured in manner hereinafter appearing

(2) The Borrower has deposited with the Lender the share certificates of —— Ordinary Shares of £1 each in The —— Company Limited (hereinafter called "the Company") together with a transfer thereof in blank duly signed by the Borrower

(3) The Borrower is a director of the Company

NOW IT IS HEREBY WITNESSED as follows:—

1. In consideration of the sum of £—— now paid by the Lender to the Borrower (the receipt whereof is hereby acknowledged) the Borrower hereby agrees that he will repay to the Lender the said sum of £—— by equal —— instalments of £—— each the first instalment to be paid on the —— next together with interest thereon or the balance thereof for the time being remaining unpaid in the meantime at the rate of —— per cent. per annum by equal quarterly payments the first such payment to be made on the —— day of —— 19—

2. So soon as the said sum of £—— together with all interest as aforesaid shall have been fully repaid to the Lender the Lender shall thereafter at the request and cost of the Borrower redeliver the said share certificates and transfer to the Borrower or as he shall direct

3. The Borrower hereby irrevocably appoints the Lender and his duly appointed agent to be the attorney of the Borrower

for the purpose of inserting the name or names of the Lender or his assigns or making any alterations or additions as to the particulars of the shares affected thereby or otherwise in or to the said transfer and to redeliver the same after any such alterations or additions have been made thereto

4. So long as the Borrower shall duly and punctually pay the said —— instalments and the said interest the dividends declared by the Company in respect of the said —— Ordinary Shares or any of them shall belong and be paid to the Borrower

5. (a) If the said —— instalments or any part thereof shall be in arrear and unpaid for —— consecutive months or

(b) if the said interest shall be in arrear and unpaid for —— days after the same shall have become due and payable or

(c) if the Borrower shall be in default of any provision or obligation on his part hereunder (other than under clause 1 hereof) or

(d) if the Borrower shall transfer or permit the transfer of any other shares in the Company registered in his name or under his power or control and the registration by the Company of such transfer or

(e) if the Company shall resolve or propose to go into voluntary liquidation or

(f) if the presentation of a petition to wind up the Company shall be or appear to be threatened or contemplated

(g) if any execution or distress shall be levied or taken against the assets and property of the Company or any part thereof or

(h) if the Borrower shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition with his creditors or

(i) if the Borrower shall for any reason cease to be a director of the Company

Then and in any such event

(1) the whole of the said sum of £—— or the balance thereof for the time being remaining unpaid together with accrued interest thereon shall forthwith become due and payable

(2) the Lender shall be at liberty to complete and register the said transfer and

(3) the Borrower shall upon the request in writing of the Lender duly resign his office as director of the Company and procure the appointment of the Lender as a director thereof AND for giving full effect to the purposes aforesaid or any of them the Borrower shall execute and do all instruments acts and things as may be requisite and necessary

6. During the subsistence of this Agreement the Borrower shall

(a) devote his whole time and attention to the business of the Company and to the best of his endeavours promote its success and development and not without the previous consent in writing of the Lender do or permit to be done any act or thing whereby the Company or its assets and property or any part thereof may be prejudiced in any way whatsoever

(b) keep and procure the keeping of full and proper books of account of the business of the Company and at all reasonable times permit and enable the same to be inspected and examined by the Lender or his duly authorised agent who shall be entitled to take and make copies of and extracts from the same

(c) give to the Lender all such information in respect of the Company and its assets and property or otherwise in relation thereto as the Lender shall reasonably require

(d) forthwith upon receipt thereof pay and procure the payment into the Company's banking account kept at —— Bank Limited at —— of all moneys and securities for money received by or on account of the Company

(e) not receive by way of remuneration as a director of the Company or otherwise a sum greater than £—— per annum without the previous consent in writing of the Lender and

(f) procure that the Company shall not in any year declare dividends on its ordinary share capital at a rate in excess of —— per cent.

AS WITNESS, *etc.*

FORM 14

Clauses for insertion in Will of elderly testator who wishes to postpone vesting of capital and absolute right of grandchildren to receive income until they attain 25 so far as the law permits. Children of testator to take life interest (*a*)

(*Drafted by E. O. Walford, Esq.*, LL.D., *Solicitor*)

I direct that my Trustees shall hold [my residuary estate] upon the following trusts

(1) To divide the same into as many equal shares as there shall be children of mine living at my death or who shall have died leaving a child or children living at my death

(2) To pay the income (*b*) of one such equal share to each child of mine living at my death during the remainder of his life

(3) Upon the death of each such child of mine to hold the share the income whereof was payable to him during his life upon trust as to both capital and income for such of his or her children living at my death (*c*) and who shall have attained or shall thereafter attain the age of 25 years and if more than one then equally between them

(4) To hold one of the said equal shares upon trust for the child or children (and if more than one then equally between them) living at my death of each child of mine who shall have

(*a*) As to this form, see the article at p. 293, *ante*.

(*b*) The testator may desire that his children shall receive only such income as the Trustees think fit. If so, similar restrictions to those applicable to grandchildren are permissible. If the Trustees have absolute power to decide what is to be paid to the children or grandchildren, it would perhaps be desirable to provide that no person capable of taking any beneficial interest under the will or the intestacy (total or partial) of the testator shall be capable of acting as a Trustee.

(*c*) This is essential, as the grandchildren have to attain 25 before taking absolute interests. If they were to take on attaining 21 all grandchildren whenever born could take, of course. Note, however, the effect of the L.P.A., 1925, s. 163. No provision is made for cases in which *grandchildren* have already attained the age of 25 and predeceased the testator leaving children as it is assumed that such cases are comparatively rare; but the necessary additions and variations could readily be made if the point were likely to arise.

predeceased me and who (here meaning the said child or children) shall have attained or shall attain the age of 25 years before or after my death And I declare that the trusts powers and provisions hereinafter declared and contained concerning the income of the contingent shares of my grandchildren whilst under the age of 25 years (including the proviso for cesser of accumulation) shall be applicable (without prejudice to their other application) to the income of each of the contingent shares of the said child or children of any such deceased child or children of mine as aforesaid except that such trusts powers and provisions (other than the proviso for cesser of accumulation) shall be deemed to be applicable immediately upon my decease

(5) My trustees may apply the whole or such part as they shall in their absolute discretion think fit of the income of the contingent share or part of a share of any grandchild of mine in [my residuary estate] under the trusts hereinbefore declared for or towards his or her maintenance education advancement or benefit during such period as such grandchild shall be under the age of 25 years whether there is or is not any other fund applicable or any person bound by law to provide for such maintenance or education or not and so that subsection (1) of section 31 of the Trustee Act, 1925 (*d*) concerning the application or disposition of income shall not be applicable in relation to such income or accumulations thereof And the receipt of one of the parents or guardians of such grandchild for any such income shall be a sufficient discharge to my Trustees who shall not be bound to see to the application of any income paid to such parent or guardian Provided that after such grandchild has attained the age of 21 years my Trustees shall be entitled but not bound to pay all or any part of such income to him or her

(*d*) Under s. 31 (1) of that Act where property is held in trust for any person whether for a vested or contingent interest, then, subject to any prior interests, although that person's interest is not vested when he or she attains 21 he or she is entitled to require that the income of the property be paid to him or her. However, subject to the L.P.A., 1925, s. 164, limiting the period of accumulation to certain alternative periods, the subsection can be negatived: *Re Turner's Will Trusts* [1936] 2 All E.R. 1435; *Re Ransome's Will Trusts* [1957] 2 W.L.R. 556; [1957] 1 All E.R. 690.

(6) So long as any such grandchild shall be living and under the age of 25 years then subject to the proviso hereinafter contained my Trustees shall accumulate the residue of the income of the contingent share or part share of such grandchild in the way of compound interest by investing the same and the resulting income therefrom in investments authorised by this my will or any codicil hereto or by law and so that such accumulations of income and investments and the income therefrom shall follow the destination of the capital of the share from which the same shall have proceeded but with power for my Trustees to pay or apply such accumulations and investments and the income therefrom in any subsequent year for or towards the maintenance education advancement or benefit of such grandchild in the like manner as the same might have been applied or paid in any of the previous years in the absence of any direction as to accumulation

Provided that upon the expiry of 21 years from my death the foregoing provisions as to payment or application of income accumulation and investment of surplus income and application of accumulations shall cease to operate and if any grandchild of mine shall not then have attained the age of 25 years the whole of the income accruing thereafter of the share or part of a share to which he or she is contingently entitled shall be paid to such grandchild for his or her sole use and benefit notwithstanding the fact that he or she may die before attaining the age of 25 years And for that purpose all income accruing due at the date when such income becomes payable to such grandchild shall be apportioned as at that date as if the same were accruing due from day to day

(7) If any grandchild of mine who would have been entitled to an interest under this my will upon attaining the age of 25 years shall die under that age leaving a child or children him or her surviving and who shall have attained or shall attain the age of 21 years (*e*) such child or children shall take (and if more than one equally between them) the interest which his her or their parent would have taken if such parent had attained the

(*e*) A later age than 21 must not be stated here in view of the rule against perpetuities. See, however, L.P.A., 1925, s. 163.

age of 25 years (including any share or fraction of a share which would have accrued to the interest of such parent if living to attain the age of 25 years under the provision for accruer next hereinafter contained)

(8) If and to such extent as the trusts hereinbefore declared in respect of any of the said equal shares shall fail as to the whole or any fraction of such share by reason of the death before attaining the age of 25 years of any grandchild of mine then such share or fraction of a share and any share or fraction of a share which shall accrue thereto under this present provision shall accrue and be added to the other share or shares the trusts whereof shall not have failed And for this purpose the trusts of any such share shall not be deemed to have failed if at the date of death of the grandchild in question there shall be living any great grandchild of mine capable of taking an interest under the foregoing provision on that behalf

(9) If there shall be no persons or person who shall take a vested interest in my residuary estate by reason of the failure of any issue of mine to take a vested interest under the foregoing trusts then upon such failure my residuary estate shall be held as to both capital and income thereof (including any accumulations of income and any investments representing such accumulations and the income of such investments) upon trust for —— (*f*)

[(10) *Power for the trustees to raise capital up to a certain amount for the advancement of any grandchild or great grandchild contingently entitled to a share or fraction of a share*] (*g*)

(*f*) In many cases litigation has resulted from the unexpected but complete failure of issue to take a vested interest. If the testator has no other views a provision that the residuary estate shall be distributed in accordance with the law applicable to the estates of persons dying wholly intestate may be suitable. This would exclude second cousins, who would, however, be included if the gift were to the testator's "next-of-kin."

(*g*) Having regard to the difficulty of assessing the value of money at a distant date such a provision (at the discretion of the trustees) may be appropriate, and where the amount of the shares is not very considerable, it will be desirable that the power should be available for the maintenance or education of the beneficiaries. The cost of education at a university is, even now, very considerable, and the income tax factor is unpredictable.

FORM 15

Servicing Agreement

(*Drafted by Douglas Barker, Esq., of Lincoln's Inn*)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN A.B. Ltd. whose registered office is situate at —— (hereinafter called "the Supplier") and C.D. Ltd. whose head office is situate at —— (hereinafter called "the Company")

WHEREAS:—

(1) By a contract dated —— of —— 19— the Supplier has sold to the Company the machinery more particularly described and set out in the Schedule annexed hereto (hereinafter collectively referred to as "the machinery")

(2) The Supplier has agreed with the Company to maintain and service the machinery in the manner and to the extent set out hereinafter

NOW IT IS HEREBY AGREED as follows:—

1. For the purposes of this Agreement the expression "the invoice date" shall be the date when the Company shall receive from the Supplier the invoice in respect of the cost of the machinery

2. For a period of twelve months from the invoice date if and as often as the Company shall give notice in writing to the Supplier of any defect or suspected defect in the machinery or in any part thereof or if a standard of performance has been agreed of any failure in performance thereof the Supplier shall keep the machinery in good order and repair and shall furnish all material and labour necessary for that purpose and shall replace any part or parts thereof which may prove defective and shall otherwise keep the machinery in proper condition for use and up to the required standard of performance

3. Subject to the next following clause hereof, for a period of 90 days from the invoice date the Supplier shall make no charge for any work done materials supplied or part or parts replaced in the machinery by the Supplier pursuant to a notice

given by the Company for that purpose in accordance with the provisions of the previous clause hereof, and thereafter for the remainder of the twelve months following the invoice date or renewal date of this agreement in accordance with the provisions of clause 6 hereof shall pay to the Supplier an inclusive service charge of £5 per day for every day or part thereof during which the Supplier's engineers and other servants or agents shall be engaged in repairing or maintaining the machinery at the Company's premises pursuant to a like notice having been given by the Company plus the travelling expenses of such engineers and other servants or agents

4. The Supplier shall not be liable for the making of any repairs the provision of any labour or the furnishing of any materials or the repair or replacement of the machinery or any part thereof where such repair or replacement is rendered necessary by the negligence or want of care of the Company or its servants and agents in maintaining the machinery or any part thereof or any wrongful or improper use thereof or part thereof

5. This agreement is for the sole benefit of the Company and cannot be assigned by them without the consent in writing of the Supplier

6. This agreement can be renewed for a further period of twelve months from the expiry of the current twelve monthly period by the Company giving to the Supplier one month's notice in writing in that behalf during the currency of this agreement and thereafter it can be renewed for a further twelve monthly period from time to time at the expiry of the then current twelve monthly period in like manner

In witness, *etc.*

The Schedule above referred to

FORM 16

Agreement between shareholders to secure that control shall remain with them or the survivor

(*Drafted by Douglas Barker, Esq., of Lincoln's Inn*)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN AB of —— Chairman and Managing Director of EF Ltd. (hereinafter called "AB") of the one part and CD of —— a Director of EF Ltd. (hereinafter called "CD") of the other part

WHEREAS:—

(1) The aforementioned EF Ltd. (hereinafter called "the Company") is a private company having at the date of these presents an authorised capital of £16,000 divided into 1,000 6 per cent. Preference shares of £1 each and 15,000 Ordinary shares of £1 each of which all the said 6 per cent. Preference shares have been issued and are fully paid up and registered in the names of and held beneficially as to 334 of such shares by AB as to 333 of such shares by CD and the remaining 333 of such shares are registered in the name of GH in her capacity as personal representative of her late husband GH who died intestate on January 1, 1957, and of which 10,000 Ordinary shares of £1 each and no more are issued and registered in the names of and held beneficially as to 3,800 of such shares by AB as to 3,700 of such shares by CD and as to 2,500 of such shares by the said GH in her said capacity as personal representative as aforesaid

(2) The parties hereto are desirous of ensuring as far as possible that the control of the Company shall remain in them or one of them

IT IS HEREBY MUTUALLY COVENANTED AND AGREED between the said parties hereto as follows:—

1. Neither party hereto shall at any time sell or attempt to sell or otherwise dispose of any shares in the Company beneficially owned by him and registered in his name or in

the name of his nominee unless he shall first offer to sell such shares to the other party hereto in accordance with the provisions hereof

2. On the death or bankruptcy of either party hereto his personal representatives or trustee in bankruptcy as the case may be shall so soon thereafter as is practicable offer all the shares in the Company beneficially owned by the deceased at the date of his death or bankruptcy as the case may be and registered in his name or in the name of his nominee to the surviving or other party hereto in accordance with the provisions hereof

3. The party offering the shares of the Company pursuant to the provisions of either of the two preceding clauses hereof (hereinafter called "the Vendor") shall make the offer in writing to the surviving or other party hereto (hereinafter called "the Purchaser") setting out the number of shares of each class he has to dispose of at a price to be agreed between the Vendor and Purchaser or in default of agreement within 14 days at such price as the Auditors for the time being of the Company shall certify by writing under their hands to be in their opinion the fair market price thereof as between a willing vendor and a willing purchaser and in so certifying the said Auditors shall be considered to be acting as experts and not as arbitrators and accordingly the provisions of the Arbitration Act 1950 shall not apply

4. The offer shall not be revocable by the Vendor except with the consent of the Purchaser unless it is withdrawn by the Vendor within a period of fourteen days after communication to him of the price which shall have been certified by the Auditors in default of agreement as to such price in accordance with the provisions of the last paragraph hereof and in the event of it not being so withdrawn the price shall be deemed to have been agreed

5. The Purchaser if he wishes to accept the offer shall do so in writing within fourteen days of the price being agreed by the Vendor and Purchaser or in default of such agreement, where the price has been certified by the Auditors, within fourteen days after the price has been deemed to have been agreed in accordance with last foregoing paragraph hereof PROVIDED always that if

the value placed upon the shares comprised in the offer by the Commissioners of Inland Revenue for the purpose of ascertaining Estate Duty (if any) leviable in respect thereof on the death of the deceased shareholder shall be higher than the value so certified by the Auditors such higher value shall be the price to be contained in the offer

6. If the Purchaser shall not signify his acceptance of such offer as aforesaid or shall signify acceptance of only part of such offer he will be deemed to have declined such offer whereupon the Vendor will be released from any obligation to the Purchaser arising under this Agreement in respect of the shares comprised in such offer

7. Each party hereto respectively covenants to exercise all the voting and other rights vested in him as holder of the said shares in the Company to ensure so far as each are able so to do the due fulfilment by the Company of any act or thing necessary to implement this Agreement

IN WITNESS, *etc.*

FORM 17

Lease of property for three years for business purposes, avoiding the operation of the Landlord and Tenant Act, Part II (*a*)

(Drafted by V. G. H. Hallett, Esq., of Lincoln's Inn)

THIS LEASE made the —— day of —— 19— BETWEEN A of etc. (hereinafter called "the Lessor" which expression shall

(*a*) During the last year of the term granted by this lease, the tenancy is not a tenancy to which Part II of the Landlord and Tenant Act, 1954, applies: see s. 23 (4) of that Act. It is submitted that s. 24 (1) of the Act is accordingly inapplicable and that s. 24 (3) (a) does not continue the tenancy, since this latter provision, *semble*, is limited to cases where the continuation of the tenancy has already begun (*cf.* Blundell and Wellings' *Landlord and Tenant Acts*, 1927 *and* 1954, 2nd ed., p. 25, para. (5)). The result appears to be that the tenancy created by this Lease comes to an end in the normal manner by effluxion of time and the tenant has no right to apply to the court for a new tenancy. See, further, the "Conveyancer's Notebook," *ante*, p. 257.

where the context so admits include his successors in title) of the one part and B of etc. (hereinafter called "the Tenant" which expression shall where the context so admits include his successors in title) of the other part

WITNESSETH as follows:

1. In consideration of the rent and covenants on the part of the Tenant hereinafter reserved and contained the Lessor HEREBY DEMISES unto the Tenant [*Parcels*] (hereinafter called "the Demised Premises") TO HOLD the Demised Premises unto the Tenant from [*date*] for the term of four years YIELDING AND PAYING THEREFOR yearly during the term hereby granted the rent of £—— Such rent to be paid without any deduction (other than a deduction authorised by the Income Tax Act, 1952, or any legislation amending or replacing that Act) by equal quarterly payments the first of such payments for the quarter ending on the —— day of —— next to be made on the execution of these presents and the subsequent payments to be made in advance (*b*) on the four usual quarter days

2. The Tenant HEREBY COVENANTS with the Lessor as follows:

[*Insert whatever covenants are thought fit, but include the following covenant*]

(...) During the last year of the said term not to use the Demised Premises or any part thereof for business purposes

3. [*Landlord's covenants*]

4. [*Proviso for re-entry, etc.*]

IN WITNESS, *etc.* (*c*)

(*b*) There is no objection to requiring payment of rent in advance in cases where s. 13 of the Rent Act, 1957, applies *provided* that the rent is required to be paid *at* and *not before* the beginning of the rental period in respect of which it is payable: see s. 15 (1) of that Act.

(*c*) Unless made to a sitting tenant, the lease will not be subject to the Rent Acts: Rent Act, 1957, s. 11 (2). But, unless for more than 21 years (s. 21), a lease of a dwelling-house (and property let for business purposes can, of course be used as a dwelling-house, in the absence of a provision to the contrary) which has been freed from the Rent Acts by the 1957 Act must not (before July 7, 1960) be made in consideration of a premium: see s. 13 of the 1957 Act. If it is desired to prohibit the use of the property for the purpose of a dwelling-house, care must be taken that the covenant does *not* apply during the last year of the term, for obvious reasons.

FORM 18 (*a*)

I

Agreement under section 17 of the Rent Act, 1957

(*Drafted by John Montgomerie, Esq., of Lincoln's Inn*)

THIS AGREEMENT is made the —— day of —— 195– BETWEEN —— of etc. (hereinafter called "the Landlord") of the first part, —— of etc. (hereinafter called "the Outgoing Tenant") of the second part and —— of etc. (hereinafter called "the Incoming Tenant") of the third part

WHEREAS:—

(1) The Outgoing Tenant is statutory tenant of the dwelling-house No. —, —— Street, —— in the County of —— (hereinafter called "the dwelling-house") being a dwelling-house to which the Rent and Mortgage Interest Restrictions Acts 1920 to 1939 apply.

(2) It has been agreed pursuant to section 17 of the Rent Act, 1957, that the Incoming Tenant shall become the statutory tenant of the dwelling-house as hereinafter provided.

NOW IT IS HEREBY AGREED as follows:—

1. As from —— (hereinafter called "the date of exchange") the Incoming Tenant will be deemed to be the tenant of the dwelling-house under the statutory tenancy heretofore enjoyed by the Outgoing Tenant.

2. ON the date of exchange the Outgoing Tenant will hand over the dwelling-house with vacant possession to the Incoming Tenant.

3. The Incoming Tenant will pay to the Outgoing Tenant so much of any outgoings discharged by the Outgoing Tenant as is referable to any period after the date of exchange.

4. The provisions of the Rent Acts as to the succession by the widow of a deceased tenant or by a member of his family to the right to retain possession shall be capable of having effect in the event of the death of the Incoming Tenant notwithstanding that they had effect in favour of the Outgoing Tenant.

AS WITNESS etc.

(*a*) See explanatory article hereon, *ante*, p. 299.

II

Tenancy Agreement giving "reasonably equivalent" security of tenure

THIS AGREEMENT is made the —— day of —— 195– BETWEEN —— of etc. (hereinafter called "the Landlord") of the one part and —— of etc. (hereinafter called "the Tenant") of the other part

WHEREBY IT IS AGREED as follows:—

1. The Landlord will let to the Tenant and the Tenant will take the dwelling-house No. —, —— Street, —— in the County of —— on a weekly tenancy from —— day, the —— day of —— 195–, at a rent of —— per week inclusive of rates.

2. If for any rental period the amount of rates (ascertained as provided for controlled tenancies by section 3 and the Second Schedule to the Rent Act, 1957) differs from the amount so ascertained of the rates for the first rental period of this tenancy the rent for that rental period shall be increased or decreased by the amount of the difference.

3. The Landlord agrees to keep the said dwelling-house in good repair except as regards defects which relate to internal decorative repair or are due to any act, neglect or default of the Tenant or any person claiming under him.

4. The Tenant agrees to keep the premises in a state of good internal decorative repair and to make good any defects due to any act, neglect or default on his part or on the part of any person claiming under him.

5. The Landlord agrees that so long as the Tenant (or after his death a member of his family who had resided with him for six months immediately preceding his death) is residing in the said dwelling-house he will not terminate the tenancy or seek to obtain possession unless either:

(a) an Order has been made under section 11 (3) of the Rent Act, 1957, freeing from control, houses having the rateable value of the said dwelling-house and any period specified in the Order (in accordance with paragraph 13 of the First Schedule to the said Act) has expired; or

(b) the Rent Acts have otherwise ceased to apply to such houses; or

(c) conditions exist such that the Court would have made an Order for possession had the Rent Acts applied to such premises.

AS WITNESS etc.

Forms under the Rent Act, 1957 (*a*)

(*Drafted by P. Elman*, M.A., *of the Middle Temple*)

FORM 19

Notice by landlord of adjustments in rent in respect of services and furniture (*b*)

To —— of ——, tenant of the premises known as ——.

1. I —— of —— as landlord of the above-mentioned premises hereby give you notice that the sum of £—— per —— at present payable by you for and in respect of the —— services (and use of furniture) provided by me thereon (*c*) will be increased by £—— per —— (making together the sum of £—— per ——), such increase to take effect and be paid from the day next hereafter fixed for payment of rent under the terms of your tenancy of the said premises, that is to say the —— day of —— 19—.

2. The reason for the increase of the said rent arises from the increase in the costs of providing such —— services (and of

(*a*) These forms (19 to 26 inclusive) are supplementary to the forms prescribed under the Act: see s. 25 (1).

Forms 19 to 24 were drafted by P. Elman, M.A., of the Middle Temple.

Forms 25 and 26 were drafted by D. Keating, B.A., of Lincoln's Inn, and C. Priday, B.A., of Gray's Inn.

(*b*) This form is intended to meet the provisions of s. 4 of the Act, although that section does not require the service of any notice.

(*c*) Where no particular part of the gross rent has been apportioned in the tenancy agreement to the services, etc., provided, the notice as drafted will require necessary amendment.

maintaining and replacing such furniture) over such costs as at [*the rental period comprising July 6, 1957, or in the case of a controlled tenancy beginning thereafter, the first rental period of such tenancy* (*d*)] calculated as follows (*e*):—

	Cost at basic date	*Cost at date of notice*	*Percentage increase*	*Actual increase on rent*
Wages				
Fuel				
Power				
Repairs				
Maintenance				
Etc.				

3. Your agreement to the said increase is requested in the form enclosed on or before the expiration of —— days from the date hereof.

4. If any question arises as to such increase or the amount thereof, then failing agreement I propose making application to the County Court to determine the matter.

Dated the —— day of —— 19—. (*Signed*)

FORM 20

Agreement of tenant to adjustment in rent in respect of services and furniture

To —— of ——, landlord of the premises known as ——.

1. I —— of ——, the tenant of the above-mentioned premises, hereby acknowledge receipt of your notice dated the —— day of —— 19— increasing the amount payable by me as such tenant for the —— services (and use of furniture) provided by you upon £—— per —— to £—— per ——.

[2. I hereby agree to such increase and undertake to pay the same from the date mentioned in your said notice] OR

(*d*) See s. 25 (1) of the Act.

(*e*) The particulars to be shown have been drafted on the assumption that the costs of the services are payable as lump sums in respect of a building of which the relevant premises form part, and accordingly the easiest manner of calculating the actual increase of rent is by ascertaining the percentage increase of the cost of the services and increasing the rent accordingly.

[2. I hereby give you notice that I do not agree to (the amount of) such increase for the following reasons:—
—— —— ——] OR

[2. I hereby give you notice that I do not agree to (the amount of) such increase in respect of the items of —— mentioned in your said notice, for the following reasons:—
—— —— ——].

Dated the —— day of —— 19—. (*Signed*)

FORM 21

Notice to quit a furnished tenancy (*a*)

To —— of ——, tenant of the furnished premises known as ——.

1. I —— of ——, the landlord of the above-mentioned furnished premises, hereby give you notice terminating on the —— day of —— 19— (*b*) your tenancy of such premises, the Furnished Houses (Rent Control) Act, 1946, having ceased to apply.

2. You are required on the date aforementioned to quit and deliver up possession of the said premises and all furniture therein belonging to the landlord in good order and condition.

Dated the —— day of —— 19—. (*Signed*)

FORM 22

Claim by an outgoing tenant for compensation in respect of improvements (*c*)

To —— of ——, landlord of the premises known as ——.

1. I —— of ——, the tenant of the above-mentioned premises,

(*a*) This form is drafted for the purposes of s. 12 (2) (b) of the Act.

(*b*) The date of termination depends on the date when notice is given. If it is given before July 6, 1958, it cannot take effect before October 6, 1958. If given after July 6, 1958, it can take effect under the general law in accordance with the terms of the tenancy, but with a minimum of four weeks (see s. 16).

(*c*) This and the following two forms are drafted for the purposes of the Rent Act, 1957, Fourth Sched., para. 5. The claim must be made BEFORE giving up possession.

hereby give you notice that I claim under the Fourth Schedule, paragraph 5, of the Rent Act. 1957, to be entitled at the termination of my statutory or controlled tenancy of the said premises on the —— day of —— 19— on quitting the same to be paid by you the sum of £—— as compensation in respect of improvements on and in the said premises made by me (or —— my predecessor in title of such tenancy) and completed after the 15th day of August 1945.

2. Such improvements have been so made and completed voluntarily and not in breach of the terms of the said tenancy and without objection in writing from the landlord, and the same will at the termination of the said tenancy add to the value of the said premises.

3. Particulars of such improvements are set out in the Schedule hereto.

Dated the —— day of —— 19—. (*Signed*)

SCHEDULE

Particulars of Improvement	*Date of Completion*	*Gross cost*	*Consideration received from landlord*	*Net cost*
1.				
2.				
3.				
			Total	£

FORM 23

Landlord's notice in reply to tenant's claim for compensation in respect of improvements

To —— of ——, tenant of the premises known as ——.

I —— of ——, the landlord (*d*) of the above-mentioned premises, hereby acknowledge receipt of your notice dated the —— day of —— 19— claiming the sum of £—— as compensation in respect of improvements made on and in the said

(*d*) If the landlord, against whom the claim is made, is himself a tenant, he may recover from his landlord such part of the compensation payable by him, having regard to all relevant circumstances. (*Ibid.*, para. 5 (b).) See the next form.

premises, and I hereby give you notice that I am not willing to pay such compensation or any part thereof (*e*) on the following grounds (*f*) :—

(1) that such improvements were made and completed in pursuance of a contract in writing dated the —— day of —— 19— and made between myself of the one part and you of the other part (*or as the case may be*).

(2) that such improvements were made in breach of the terms of the tenancy.

(3) that before completion of such improvements by notice in writing dated the —— day of —— 19— and addressed to you I objected to the same.

(4) that I intend to demolish (or to make structural alterations in) the said premises.

(5) that I intend to use the said premises on the termination of your tenancy for a purpose different from its current use, *viz.* ——.

Dated the —— day of —— 19—. (*Signed*)

FORM 24

Notice to superior landlord of claim by subtenant for compensation in respect of improvements

To —— of ——.

I hereby give you notice that I have on the —— day of —— 19— received from —— my subtenant of the premises known as —— which I hold from you under a lease dated the —— day of —— 19— a claim (a copy of which is enclosed) for compensation under the Rent Act 1957 in respect of improvements made and completed on and in the said premises

(*e*) The landlord may be willing to pay compensation in respect of some improvements but not in respect of others, and the notice can be amended to meet such eventuality, reference being made to the improvements by their numbering in the schedule to the tenant's claim.

(*f*) The grounds given in the form are alternatives but more than one may apply. If the first three apply, no compensation is payable (*ibid.*, para. 5 (4)). The last two grounds are factors to be taken into consideration in determining how far, if at all, the improvements add to the value of the premises.

and I herewith in pursuance of the Fourth Schedule, paragraph 5 (b) to the said Act claim to be entitled to receive from you on the termination of such Lease the sum so payable or paid by me to the said —— in like manner and on the same conditions as if I myself had made and completed the said improvements.

Dated the —— day of —— 19—. (*Signed*)

FORM 25

Agreement between landlord and tenant as to rateable value for the purposes of the decontrol provisions of the Rent Act, 1957 (*a*)

The Rent Act, 1957

We AB of —— the landlord of the premises known as —— and CD the tenant thereof hereby agree that the rateable value of the said premises for the purposes of the above Act is £——, being a proportion of the rateable value/net annual value (*b*) of £—— shown in the valuation list on November 7 1956 for the hereditament known as —— of which the said premises form part.

Dated this —— day of —— 19—.

Signed —— (Landlord)

—— (Tenant)

FORM 26

Agreement between landlord and tenant as to the factors required to be ascertained for the calculation of the rent limit of controlled houses, Rent Act, 1957 (*c*)

The Rent Act, 1957

We AB of —— the landlord of premises known as —— (in this Agreement referred to as "the landlord") and CD

(*a*) See s. 25 (1) and 5th Sched., para. 1 (b), and the article at p. 332 *ante*.

(*b*) Where the rateable value differs from the net annual value, it is the latter which should be apportioned: 5th Sched., para. 1 (a) and (b).

(*c*) As to this form see the article at p. 332, *ante*.

the tenant thereof (in this Agreement referred to as "the tenant") hereby agree as follows:—

1. The "1956 gross value" of the said premises for the purposes of the above Act is £—— being a proportion of the gross value of £—— shown in the valuation list on November 7 1956 for the hereditament known as —— of which the said premises form part.

2. The appropriate factor for the purposes of section 1 of and paragraph 1 (3) of the First Schedule to the above Act is ——.

3. £—— is the annual amount of the reasonable charge for the services set out in the first part of the Schedule to this Agreement being the services provided by the landlord (and/or by a superior landlord) during the rental period comprising July 6 1957.

4. £—— is the annual amount of the reasonable charge for the furniture [set out in the second part of the said Schedule being the furniture] (*d*) which the tenant is entitled to use during the said rental period under the terms of the tenancy.

Dated this —— day of —— 19—.

Signed —— (Landlord)
—— (Tenant)

SCHEDULE

PART I

Services

PART II

Furniture

(*d*) This can be deleted, if desired.

FORM 27

Service agreement for an infant artiste (*a*)

(*Drafted by Michael B. Conn*, LL.B., *Solicitor*)

AN AGREEMENT made the —— day of —— 19— BETWEEN AB of —— *etc.* (professionally known as ——) (hereinafter called "the Artiste") of the first part CD of —— *etc.* (hereinafter called "the Personal Manager") of the second part EF of —— *etc.* (hereinafter called "the Booking Agent") of the third part and GH of —— *etc.* (hereinafter called "the Guarantor") of the fourth part

WHEREAS:—

(1) The professional reputation and success of the Artiste has been steadily increasing under the guidance and endeavours of the personal Manager and the Booking Agent

(2) The Artiste and the Guarantor are desirous of securing the continued services and goodwill of the Personal Manager and the Booking Agent

(3) The Personal Manager and the Booking Agent are desirous of further enhancing and promoting the professional reputation and success of the Artiste

Now in pursuance of the said respective desires and for the mutual protection and benefit of the Artiste the Personal Manager and the Booking Agent IT IS HEREBY AGREED as follows:—

1. THE PERSONAL MANAGER engages the Artiste to sing act and perform wherever and whenever required by the Personal Manager in theatres concert halls or other places of public

(*a*) A contract of service, although prima facie binding upon an infant, will, in the event of a dispute, only be held enforceable against him if, taking all the terms together, the contract is beneficial to the infant: see *Clements* v. *L. & N. W. Ry.* [1894] 2 Q.B. 482. In the first place it must be shown that the agreement contains clauses, and only clauses, which are usual and customary in the service in question: see *Leng & Co., Ltd.* v. *Andrews* [1909] 1 Ch. 763. It is conceived that the clauses contained in the present agreement are all such as are usual and customary in the theatrical profession and subject to the blanks being completed in a manner beneficial to the particular artiste, should satisfy the above requirements.

entertainment in Great Britain and throughout the world and to make stage radio television cinematograph cabaret recording personal appearances and performances wherever and whenever required

2. THE ARTISTE agrees to sing act and perform to the best of his ability and skill at such times and places as may be required by the Personal Manager and also whenever required by the Personal Manager to study for such parts as he may request and to perform such parts whenever required

3. THE ENGAGEMENT shall commence on the —— day of —— 19— and subject to the provisions of this Agreement the Personal Manager shall have the right to retain the services of the Artiste for any period not exceeding five years from the date of commencement of the engagement

4. DURING the continuance of this Agreement the Artiste will not sign or enter into any contract or agree to any engagement for any theatrical stage recording cinematograph or other personal appearance or entertainment without the prior written consent of the Personal Manager

5. THE PERSONAL MANAGER hereby agrees with the Artiste:—

(i) To use his best endeavours to enhance the reputation of the Artiste and obtain suitable engagements and contracts for the Artiste

(ii) To provide suitable costumes for the Artiste's personal appearances (save ordinary clothes which would be used by the Artiste in his private capacity)

(iii) That during the continuance of this Agreement the Artiste shall be paid not less than £—— for every week in which he shall have worked continuously and proportionately for part of a week

(iv) The Artiste shall be repaid all necessary and reasonable travelling expenses incurred by him in connection with any appearances required to be made by him hereunder [in countries other than the United Kingdom]

6. IN the event of there being a break at any time in the continuous performances of the piece in which the Artiste shall be engaged or of the theatre or other place of entertainment at

which the Artiste shall for the time being be performing being closed then the Artiste shall not be entitled to any salary in respect of the periods of such intervals unless and to the extent that the Artiste shall be engaged in other work during any of such periods

7. THE ARTISTE shall have the right to determine this Agreement by four weeks' notice in writing to the Personal Manager served within one month from the accrual of such right as hereinafter provided if at the end of any complete year of this engagement as set out in column A of the Schedule hereunder he does not receive as remuneration during such year the amount set out in column B of the Schedule

SCHEDULE

Column A	*Column B*
First Year	£——
Second Year	£——
Third Year	£——
Fourth Year	£——
Fifth Year	£——

PROVIDED that if the Personal Manager shall during the four weeks' period of notice give to the Artiste in cash the difference between the actual amount of remuneration received during that year and the amount specified in column B of the Schedule such notice shall not determine this Agreement

8. IF THE ARTISTE is unable to perform through illness the Personal Manager shall be immediately notified and medical certificates shall be furnished if required by the Personal Manager In the event of the Artiste being unable to perform through illness for more than fourteen days in any one year the amount specified in column B of the Schedule contained in the previous clause hereof shall be reduced by one fiftieth for each seven days or part of seven days exceeding the said fourteen days and the said clause shall be construed accordingly

9. AT THE END of the period of this engagement the Personal Manager shall have the option by two weeks' notice in writing served upon the Artiste before the expiration of or within 7

days after the said period to re-engage the Artiste for a further period of five years on the same terms as are herein contained (save this Clause) but with the following amendments to such terms namely:

(a) The amount specified in Clause 5 (iii) hereof shall be £—— per week

(b) The Schedule to Clause 7 shall be:—

First Year	£——
Second Year	£——
Third Year	£——
Fourth Year	£——
Fifth Year	£——

10.—(a) THE ARTISTE hereby agrees with the Personal Manager and the Booking Agent that the Booking Agent shall be the sole and exclusive booking agent of and for the Artiste and shall be paid —— per centum commission on all bookings of the Artiste Such commission shall not be deducted from the amounts receivable by the Artiste in calculating the amounts specified in the Schedule to Clause 7 or the amount specified in Clause 5 (iii) hereof

(b) THE BOOKING AGENT shall be the sole and exclusive booking agent of and for the Artiste during the continuance of the engagement of the Artiste hereunder and during the period of any renewal of this Agreement under Clause 9 hereof

11. IN CONSIDERATION of the Personal Manager and the Booking Agent entering into this Agreement at his request the Guarantor hereby agrees with the Personal Manager and the Booking Agent and as a separate agreement with each of them that the Artiste will carry out all the terms of his agreements and stipulations herein contained and that he will indemnify them and each of them against any losses they or either of them may suffer by reason of the failure of the Artiste to observe or perform any such agreement or stipulation

AS WITNESS, *etc.*

FORM 28

Assignment by mortgagee under power of sale where the mortgagee granted the underlease under which the property is held (*a*)

(Drafted by F. W. Kay, Solicitor, Rochdale)

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of —— etc. (hereinafter called "the Vendor") of the one part and C of —— etc. (hereinafter called "the Purchaser") of the other part

WHEREAS by an Underlease (hereinafter called "the Underlease") dated etc. and made between the Vendor of the one part and B of the other part All that messuage or dwelling-house situate at —— Together with the plot of land forming the site thereof and used and occupied therewith (which said plot of land was shown edged red on the plan endorsed on the Underlease and formed part of the plot of land containing —— square yards or thereabouts comprised in and edged red on the plan drawn on a Lease (hereinafter called "the Lease") date and parties etc. and demised to the said —— for the term of 999 years from the date of the Lease at the yearly rent of £——) Together with the appurtenances (Except and reserving as in the Underlease is mentioned) were demised unto the said B for the term of 900 years from the date of the

(*a*) Since building societies have been restricting the money they are prepared to lend, in a number of cases vendors, in order to effect a sale, have loaned part of the purchase money to the purchaser and taken a legal charge as security. In normal cases this does not create any difficulty and should they sell under their power of sale there are a number of forms of precedents to which one can turn. In the north of England there are a good number of long leaseholds for 999 years, and where terraced houses are sold it usually happens that the sale is effected by means of an underlease of part of the land in the head lease and the house erected thereon.

It has been argued that where the mortgagee is also the vendor-underlessor in the event of a sale under the mortgagee's statutory powers the covenant by the purchaser (whether express or implied) to observe and perform the covenants in the underlease and to indemnify the vendor is of no effect unless a special form of express covenant is taken.

The present Form has been prepared to overcome this difficulty.

Underlease Subject to the payment of the yearly rent of £—— thereby reserved and to the covenants on the part of the underlessee and the conditions contained in the Underlease

AND WHEREAS by a Legal Charge (hereinafter called "the Legal Charge") dated the —— day of —— 19— and made between the said B of the one part and the Vendor of the other part the property comprised in and demised by the Underlease was charged by way of Legal Mortgage to the Vendor to secure the payment of the principal sum of £—— and interest and other moneys as therein mentioned

AND WHEREAS the Vendor has agreed with the Purchaser for the sale to him at the price of £—— of the premises comprised in and demised by the Underlease for all the residue now unexpired of the term thereby created

NOW THIS DEED WITNESSETH as follows:—

1. IN consideration of the sum of £—— paid etc. (receipt of which sum the Vendor hereby acknowledges) the Vendor AS MORTGAGEE in exercise of the power of sale conferred on him by statute and all other powers enabling him hereby ASSIGNS unto the Purchaser ALL AND SINGULAR the messuage dwelling-house and premises situate at —— comprised in and demised by the Underlease (Except and reserving as in the Underlease is mentioned) TO HOLD the same unto the Purchaser for all the residue now unexpired of the said term of 900 years created by the Underlease subject henceforth to the payment of the said yearly rent of £—— thereby reserved and to the performance and observance of the covenants on the part of the underlessee and the conditions in the Underlease contained and discharged from all right of redemption and from all claims and demands under the Legal Charge

2. THE Purchaser for himself and his successors in title hereby COVENANTS with the Vendor and the persons deriving title under him the estate owner or owners for the time being of the reversion immediately expectant on the term created by the Underlease that he the Purchaser and his successors in title will henceforth duly pay the said yearly rent of £—— reserved by the Underlease on the days and in manner therein

provided and observe and perform all the covenants on the part of the Underlessee and the stipulations in the Underlease contained as fully and in all respects as if the Purchaser had been the original underlessee mentioned in the Underlease and will indemnify and keep indemnified the Vendor from and against all actions proceedings costs damages claims demands and liabilities for or in respect of any breach of the covenants on the part of the lessee and the conditions contained in the Lease (other than for payment of the yearly rent thereby reserved) so far as the same are still subsisting and relate to or affect the premises comprised in the Underlease and hereby assigned

3. Nothing herein contained shall prejudice or affect the original reservation of rent or the binding effect of the several stipulations in the Underlease contained on the premises demised by the Underlease and the persons from time to time entitled thereto or the right of the Vendor and his successors in title as reversioners immediately expectant on the determination of the term granted by the Underlease to re-enter upon the premises demised by the Underlease under the power of re-entry thereby reserved to him for non-payment of the said rent or the breach or non-observance of any of the said covenants or stipulations

[4. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £——]

In witness, *etc.*

FORM 29

Will of Testator domiciled in England giving his property to brothers resident in enemy territory or their issue, whose present addresses are unknown and it is uncertain whether they are still living

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

I, A of —— etc. declare this to be my last will which I make this —— day of —— 19— hereby revoking all other wills and testamentary dispositions by me heretofore made

Declaration as to domicile.

1. I declare that my domicile is English [and that I am a naturalised British subject] and that it is my wish and intention that this my will and any codicil hereto shall be construed and operate according to English law

Appointment of executors.

2. I appoint B of —— etc. and C of —— etc. (hereinafter called "my trustees") to be the executors and trustees of this my will

Trusts for brothers and issue.

3. I devise and bequeath all my real and personal estate whatsoever and wheresoever not hereby or by any codicil hereto otherwise specifically disposed of (including any real or personal property over which I have a general power of appointment by will [and property in which I have an entailed interest in possession]) subject to the payment of my debts and funeral and testamentary expenses and the legacies hereby or by any codicil hereto bequeathed unto my trustees IN TRUST for such of my brothers D, E and F (whose last known addresses were —— and ——) as shall be living at my death and shall be proved to the satisfaction of my trustees as the result of reasonable inquiries to be living and the issue living at my death of such of my said brothers as shall have predeceased me and shall be proved as aforesaid to be living in equal shares per stirpes PROVIDED THAT if it shall not be proved to the satisfaction of my trustees as aforesaid within the period of 7 years from my death that any of my said brothers or any issue of theirs are living or if it shall be so proved to the

satisfaction of my trustees as aforesaid that all my said brothers and all issue of theirs are dead then upon the expiration of the said period of 7 years or upon it being so proved to the satisfaction of my trustees that all my said brothers and all issue of theirs are dead (whichever shall first happen) my trustees shall hold my estate IN TRUST for G absolutely And the decision of my trustees as to the sufficiency of proof of the matters mentioned in this clause shall be final and binding upon all persons interested under this my will

Powers of executors pending transfer of estate.

4. DURING the period until the trust hereinbefore declared for the said G takes effect or until my estate can be transferred to my said brothers or their issue my trustees shall (subject as hereinafter provided as to investment) have in regard to my estate all the powers of an absolute owner and without being liable for any loss or deficiency

Costs of inquiries.

5. THE costs of any inquiries as to whether any of my said brothers or their issue are living shall be borne by and paid out of my estate

Consents to transfer.

6. MY trustees shall not be liable for not paying or transferring my estate to my said brothers or their issue when their existence shall have been proved as aforesaid until the consent of the Administrator of Enemy Property and the consent of or on behalf of H.M. Treasury or of any other person or body which shall be required for such payment or transfer is obtained And until all such consents have been obtained the income of my estate shall be accumulated at compound interest by investing the same and the resulting income therefrom in any of the investments hereby authorised and such investments shall be an accretion to the capital of my estate (*a*)

Investment.

7. MY trustees shall not invest any money representing my estate requiring investment except in Government securities which are not redeemable for at least 2 years from the date of

(*a*) Under s. 5 of the Exchange Control Act, 1947, no payment to or for the credit of a person resident outside the scheduled territories (*viz.*, the Sterling area) can be made without the permission of the Treasury. Application for such consent should be made to the Bank of England. Consent to the making of a will in favour of persons outside the Sterling area is not required: *ibid.*, s. 29 (1).

investment unless the consent of or on behalf of H.M. Treasury (if so required) shall be obtained (*b*)

Power of appropriation.

8. THE power of appropriation conferred by the Administration of Estates Act 1925 shall be exercisable by my trustees without any of the consents made requisite by that Act

Solicitor's charging clause.

9. ANY executor or trustee for the time being hereof being a solicitor or other person engaged in any profession or business shall be entitled to charge retain and be paid all usual professional or other charges for business done by him or his firm in relation to the administration of my estate or the execution of the trusts hereof and also his reasonable charges in addition to disbursements for all other work and business done and time spent by him or his firm in connection with matters arising in the premises including matters which might or should have been attended to in person by an executor or trustee not being a solicitor or other person so engaged

IN WITNESS, *etc.*

FORM 30

Settlement of freeholds on the trusts of an existing realty settlement (*c*)

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

I. *Vesting Deed*

Parties.

THIS VESTING DEED is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the first part B of *etc.* (hereinafter called "the Tenant

(*b*) Under the Exchange Control (Blocked Accounts) Order, 1948 (S.I. 1948, No. 1663), and para. 3 of the Third Schedule to the Exchange Control Act, 1947, moneys in a blocked account can be invested only in Government securities not redeemable for at least two years from the date of purchase, except with the consent of the Treasury.

(*c*) Unless the property is small or the trusts of the existing settlement are complicated, it is usually preferable not to make a referential settlement, but to make an independent settlement setting out the trusts in full: *cf. In re Symons* [1927] 1 Ch. 344 as to paying off charges.

for Life") of the second part and C of *etc.* and D of *etc.* (hereinafter called "the Trustees") of the third part

Recital of Settlor's Seisin.

WHEREAS The Settlor is the estate owner in respect of the fee simple of the property hereinafter described [subject to the Mortgages mentioned in the Schedule hereto] and is desirous of settling the same upon the trusts hereinafter referred to

NOW THIS DEED WITNESSETH as follows:

Conveyance of Tenant for Life.

1. THE Settlor [As Settlor] hereby conveys to the Tenant for Life ALL THAT *etc.*

TO HOLD the same unto the Tenant for Life in fee simple [subject to the said Mortgages mentioned in the said Schedule hereto and the principal money and interest thereby respectively secured]

Declaration of Trust.

2. THE property hereby assured is vested in the Tenant for Life upon trusts declared concerning the same by a Trust Instrument bearing even date with but intended to be executed contemporaneously with these presents and made between the same parties as are parties hereto and in the same order or upon such other trusts as the same ought to be held from time to time

Settled Land Act Trustees.

3. THE Trustees are the trustees of the Settlement for the purposes of the Settled Land Act 1925

Additional powers.

[4. THE following additional or larger powers are conferred by the Settlement in relation to the settled property and by virtue of the Settled Land Act 1925 operate and are exercisable as if conferred by that Act on a tenant for life namely ——] (*d*)

Power to appoint trustees.

5. THE power of appointing a new trustee or new trustees of the Settlement is vested in E [No person is nominated by the Settlement for the purpose of appointing new Trustees thereof and the statutory power applies for that purpose and is vested in the Trustees]

THE SCHEDULE ABOVE REFERRED TO

[This will contain particulars of the Mortgages]

(*d*) If any additional powers are conferred by the Settlement on the trusts of which the property is settled, they should be set out here.

II. *Trust Instrument*

Parties.

THIS TRUST INSTRUMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Settlor") of the first part B of *etc.* (hereinafter called "the Tenant for Life") of the second part and C of *etc.* and D of *etc.* (hereinafter called "the Trustees") of the third part

Recitals; desire to settle.

WHEREAS (1) The Settlor is desirous of settling the property comprised in the Vesting Deed hereinafter referred to and bearing even date herewith [subject to the Mortgages therein referred to] upon the trusts declared by a Settlement [Trust Instrument] (hereinafter called "the Settlement") dated *etc.* and made between *etc.* in relation to the freehold property comprised therein under which the Tenant for Life is tenant for life in possession and the Trustees are the trustees of the Settlement for the purposes of the Settled Land Act 1925 [as appears from a Vesting Deed dated the —— day of —— 19— and made between the Trustees of the one part and the Tenant for Life of the other part and a Deed of Declaration dated *etc.* and made between *etc.*]

Vesting Deed.

(2) For the purpose of effectuating his said desire the Settlor by a Vesting Deed (hereinafter called "the Vesting Deed") bearing even date herewith and made between the same parties as are parties hereto and in the same order duly vested the said property [subject to the said Mortgages] in the Tenant for Life upon the trusts declared concerning the same by a Trust Instrument of even date therein referred to being this Deed

NOW THIS DEED WITNESSETH as follows:

Declaration of Trust.

1. THE Settlor hereby directs and the Tenant for Life with the concurrence (hereby testified) of the Trustees hereby agrees and declares that the Tenant for Life will stand possessed of the said property comprised in the Vesting Deed [subject to the said Mortgages] UPON THE TRUSTS and with and subject to the powers and provisions declared and contained in the Settlement concerning the freehold property comprised therein or such of the same as are subsisting and capable of taking effect

but not so as to increase or multiply charges or powers of charging (*e*)

[2. THE principal money and interest respectively secured by the said mortgages shall be primarily charged on the mortgaged property in exoneration of the Settlor and his estate and effects]

IN WITNESS, *etc.*

FORM 31

Provision in Articles of Association of a Company enabling a Director to appoint an Alternate Director to act for him when the Director is unable to act on his own behalf (*a*)

(*Drafted by Douglas Barker, Esq., of Lincoln's Inn,* and *A. P. Halberstam, Esq., Solicitor*)

1

Alternate Directors

(1) EVERY DIRECTOR may in respect of any period in which he is absent from the United Kingdom or incapable of exercising his duties because of physical disability or for any other reason appoint another director or a person approved by resolution of the Board of Directors as an alternate Director Such appointment shall be in writing signed by the Director appointing and shall be lodged with the Company

(2) Every alternate Director so appointed shall for the period of such appointment—

(a) be deemed to be an officer of the Company and not the agent of his appointor so that the appointing Director shall not be responsible for the acts and defaults of the alternate Director

(d) be entitled *vis-à-vis* the Company to receive from the Articles of Association and shall exercise and discharge all the functions powers and duties of his appointor except that he

(*e*) The Trustees as trustees for the purposes of the Settled Land Act, 1925, of the existing Settlement will, under s. 31 of that Act, become the trustees for the purposes of the Act of the new settlement.

They should, it is thought, be parties to the Trust Instrument to show their acceptance of the trust.

(*a*) As to this form, see the article at p. 381, *ante.*

shall not be required to hold any share qualification nor shall he be entitled to appoint an alternate Director nor shall he be counted as a director for the purposes of any provision relating to the maximum or minimum number of Directors of the Company

(c) if such alternate Director be also a Director have an additional vote for each Director for whom he acts as alternate at every meeting of the Directors

(d) be entitled *vis-à-vis* the Company to receive from the Company the director's fees to which his appointor would but for such appointment have been entitled and his appointor shall not *vis-à-vis* the Company be entitled to any such remuneration for that period

(3) The appointment of an alternate Director shall automatically cease and determine—

(a) if his appointor ceases for any reason to be a Director provided however that if his appointor shall cease to be a Director pursuant to a provision of these Articles requiring retirement by rotation and such appointor is re-elected at the same meeting as that at or from which such retirement is required to take effect every appointment made by him pursuant to such provision which was in force immediately before such retirement shall remain in force

(b) if his appointor gives notice thereof in writing under his hand to the Company

(c) if his appointor returns to the United Kingdom or ceases to be physically incapacitated

2

Alternate Directors

EVERY DIRECTOR may by notice in writing signed by him and deposited with the Company appoint an Alternate to act on his behalf during his absence abroad or inability for any reason to act as such Director for a period not longer than [one month] Such Alternate must be either—

(1) a Director of the Company or

(2) a person approved by resolution of the Board of Directors

The Alternate shall be the agent of the Director appointing him and not of the Company and the Company shall not be liable to pay to such Alternate any remuneration for his acting on behalf of the Director appointing him Every such appointment shall immediately cease and determine when the appointing Director shall so inform the Company by notice in writing signed by him During the period of his appointment the Alternate shall have the same right to receive notices of every meeting of the Directors and to attend to be counted as forming a quorum to speak and to vote thereat as the Director appointing him

ERRATUM

p. 746, in Form 31, para. (b) should read:—

(b) be subject to the provisions of the Memorandum and

FORM 32 (*a*)

Comprehensive covenant against assigning etc.

Not to assign charge underlet or part with possession of the demised premises or any part thereof nor to hold or occupy the demised premises or any part thereof whatsoever as trustee or agent or otherwise for the benefit of any other person.

FORM 33

Deed of Family Arrangement between next-of-kin of an Intestate whereby the surviving husband takes the entire estate subject to an obligation to devise a freehold house to the surviving daughter

THIS DEED OF FAMILY ARRANGEMENT is made the —— day of —— 19— BETWEEN A B of *etc.* (hereinafter called "Mrs. A B") of the one part and C D of *etc.* (hereinafter called "Mr. C D") of the other part

WHEREAS:—

(1) C D E (hereinafter called "the Intestate") died on the —— day of —— 19— intestate leaving her surviving Mr. C D and Mrs. A B who are respectively the widower and only child of the Intestate and are her statutory next-of-kin

(2) Letters of administration to the estate of the Intestate were on the —— day of —— 19— granted out of the —— Probate Registry to Mr. C D and Mrs. A B

(3) Mr. C D and Mrs. A B have got in the real and personal estate of the Intestate and have paid thereout her funeral testamentary expenses debts and death duties payable on her death

(4) The net residuary estate of the Intestate (other than personal chattels) consists of the property and assets specified in the Schedule hereto all of which said property and assets have been valued for the purposes hereof at the amounts mentioned in the said Schedule and such net residuary estate or the

(*a*) The ingenuity of lessees (or their advisers) has constantly called for the revision of the form of the covenant against assigning and underletting in order to prevent the evasion of the spirit. The present form, although short, does, it is thought, thwart even the most ingenious devices.

beneficial interest therein or in the proceeds of sale thereof is hereinafter called "the Intestate's Residuary Estate"

(5) Under the Administration of Estates Act 1925 as amended by the Intestates' Estates Act 1952 Mr. C D is entitled to a charge on the Intestate's Residuary Estate for the sum of £5,000 free of death duties and costs together with £—— interest thereon and subject thereto Mr. C D is entitled to a life interest in one half of the Intestate's Residuary Estate and subject to such life interest Mrs. A B is entitled to such half absolutely and Mrs. A B is also absolutely entitled in possession to the other half of the Intestate's Residuary Estate (subject as aforesaid)

(6) Mr. C D has executed a Will dated the —— day of —— 19— clause — whereof is in the following terms:—

"I DEVISE AND BEQUEATH (free of estate duty and all other death duties (if any)) the freehold house known as —— in the county of —— (which forms part of the estate of my late wife) and all my interest therein or in the proceeds of sale thereof at the date of my death to my said Daughter Mrs. A B absolutely Provided That if the said freehold house shall not belong to me and I shall have no interest therein or in the proceeds of sale thereof at the date of my death then and in that event and in lieu thereof I give my said Daughter Mrs. A B a legacy of £——"

(7) In consideration of the covenants on the part of Mr. C D hereinafter contained Mrs. A B has agreed to assign to Mr. C D all her interest or several interests in the Intestate's Residuary Estate

NOW THIS DEED WITNESSETH as follows:—

1. Mrs. A B as beneficial owner hereby assigns unto Mr. C D ALL THOSE her several interests in the Intestate's Residuary Estate TO HOLD the same unto Mr. C D absolutely to the intent that Mr. C D shall henceforth be solely and absolutely entitled to the Intestate's Residuary Estate

2. Mr. C D hereby covenants with Mrs. A B as follows:—

(1) That save as hereinafter provided Mr. C D will not do or suffer to be done any act or thing the effect whereof would

be to modify or revoke any of the provisions contained in clause — of his said Will

(2) That in the event of Mr. C D contemplating re-marriage he will prior to any such marriage execute a further will or a codicil to his said Will which shall be expressed to be made in contemplation of such marriage and shall contain or confirm a gift in the terms of clause —— of his said Will

(3) That if at the date of Mr. C D's death his interest in the said freehold house known as —— aforesaid or in the proceeds of sale thereof shall be subject to any charge or incumbrance to which the same is not now subject or shall not be an interest enjoyed in severalty then and in any such event Mr. C D's personal representatives shall pay to Mrs. A B such a sum as together with the value of the interest in the said freehold house or in the proceeds of sale thereof as Mr. C D shall die possessed shall amount to the sum of £——

(4) That if for any reason (other than lapse (*a*)) the gift to Mrs. A B contained in clause — of Mr. C D's said Will or the said gifts contained in any such other will or codicil as aforesaid shall not take effect then and in any such case Mr. C D's personal representatives shall within 6 months of Mr. C D's death pay to Mrs. A B the sum of £——

(5) That if and as soon as any duty or duties shall become payable in respect of any of the interests of Mrs. A B hereby assigned he will pay and discharge the same and will at all times keep Mrs. A B and her executors and administrators effectually indemnified against the same and every part thereof and against all actions proceedings costs charges claims and demands whatsoever in respect thereof

3. [*Certificate of value if required*]

IN WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

Assets (other than personal chattels) constituting the Intestate's Residuary Estate.

(*a*) If it is desired to provide for lapse (which will only occur in the event of Mrs. A B's death without leaving issue her surviving) additional provisions must be inserted.

FORM 34

Service agreement for managing director of a company

(Drafted by Douglas Barker, of Lincoln's Inn)

AN AGREEMENT under seal made this first day of March 1957 BETWEEN X Y & Company Limited whose registered office is situate at —— (hereinafter called "the Company") of the one part and Albert Bertram Smith of —— (hereinafter called "Mr. Smith") of the other part

WHEREBY IT IS MUTUALLY AGREED as follows:—

1. THE Company shall employ Mr. Smith and Mr. Smith shall serve the Company in the manner hereinafter set out from the 1st day of June 1957

2. As soon as reasonably may be after the date hereof the Company shall appoint Mr. Smith to the position of Managing Director of the Company

3. DURING the continuance of his employment as Managing Director under the provisions of this Agreement Mr. Smith shall devote his whole time and attention to his duties as Managing Director and shall do all in his power to ensure the success of the Company. Without prejudice to the generality of the foregoing Mr. Smith shall be responsible for:—

(a) (In collaboration with the Sales Manager) dealings and relations with the Company's more important customers;

(b) factory production;

(c) office administration;

(d) supervision of the Company's day to day financial affairs;

(e) supervision of Stocks;

(f) proper compliance with contracts to which the Company is a party

4. DURING the continuance of his employment hereunder the remuneration of Mr. Smith shall be:—

(i) an annual salary of [£2,000] pounds payable in arrears by equal monthly instalments on the last day of each calendar month;

(ii) a commission at the rate of [One pound] per One thousand pounds of the total turnover of the Company in the

period from the 1st day of June 1957 to the 21st day of September 1957 (both dates inclusive) such commission to be paid as soon as conveniently may be after the 31st day of October 1957. In calculating the Company's turnover for the purposes of this Clause, only sales for which the Company shall have actually received payment shall be taken into consideration;

(iii) a commission at the rate of [Three pounds] per One thousand pounds of the Company's total turnover in any calendar year ending on the 21st day of September in which the Company's total turnover exceeds [£150,000], provided that no commission shall be payable under the provisions of this sub-clause in respect of any sales made prior to the 21st day of September 1957. Commission under the provision of this sub-clause shall be paid as soon as conveniently may be after the 31st day of October of the year 1958 and the 31st day of October in every subsequent year. If this agreement shall be determined otherwise than with effect from the 21st day of September in any year then if but for the determination of this agreement Mr. Smith would have been entitled to a commission pursuant to this sub-clause he shall be paid the proportion of such commission calculated on the annual turnover in the year in which this Agreement is determined equal to the proportion which the relevant period of Mr. Smith's employment hereunder bears to a calendar year;

(iv) a bonus of [£200] or such larger sum as the Company may in its absolute and unfettered discretion decide if and only in the event that the net profit before deduction of taxes but after payment of all expenses including salaries and commissions and after making reasonable provision for depreciation shall exceed [Ten] per cent. of the gross turnover. Such bonus to be payable only in respect of any complete calendar year ending on 21st day of September during which Mr. Smith shall have been employed pursuant to this Agreement. Any bonus payable under this Clause shall be paid as soon as conveniently may be after the 31st day of October in any year in respect of the year ending the 21st day of September immediately preceding such 31st day of October

5. THE Company shall reimburse Mr. Smith in respect of all

expenses reasonably and properly incurred by him on the business of the Company upon production by Mr. Smith of the appropriate vouchers. If Mr. Smith reasonably and properly uses his own car on the business of the Company the Company shall pay to Mr. Smith for such use at the rate of [one shilling] per mile

6. Mr. Smith shall be entitled to [three] weeks' holiday with pay in the calendar year 19— and in the second and all subsequent years of his employment hereunder Mr. Smith shall be entitled to [six] weeks' holiday with pay. Mr. Smith's holidays shall be taken at such times as shall be agreed upon between the Company and himself

7. This Agreement shall continue in force until determined by either party hereto giving to the other six months' notice in writing determining the Agreement such notice to expire at the end of a calendar month

8. Mr. Smith shall supply to such persons as the Board of the Company shall name for this purpose detailed weekly reports of all of his activities on behalf of the Company

9. Any confidential documents or information in writing at any time entrusted to Mr. Smith by the Company shall be returned to the Company forthwith on demand being made by the Company or (if no such demand shall previously have been made) upon the determination of Mr. Smith's employment hereunder

10. Mr. Smith hereby agrees that:

(i) During the continuance of his employment hereunder he will not directly or indirectly engage in or be concerned with or interested in any other employment or business of any kind whatsoever except as a shareholder or debenture holder in a Public Limited Liability Company not carrying on business of a nature similar to that of the Company;

(ii) He will not [in Great Britain] for a period of [three] years after the determination of his employment hereunder engage in or be concerned with in any manner whatsoever (whether on his own account or as employee partner director or otherwise) any business dealing in products which compete with any of the products of the Company;

(iii) He will not at any time either before or after the termination of his employment hereunder directly or indirectly disclose communicate divulge or furnish to any person firm partnership or Company or use for his own purposes the names of the Company's customers or any of them or any of the Company's policies, trade secrets, designs, inventions or processes of manufacture which may be communicated to him or of which he may learn in the course of or by virtue of his employment hereunder

11. THE failure of the Company at any time to require or enforce the performance by Mr. Smith of any of the stipulations or obligations on his part herein contained shall in no way affect the right of the Company to enforce the same thereafter

12. ANY dispute difference or question hereunder shall be referred to a single arbitrator to be appointed in default of agreement by the [Secretary for the time being of the London Chamber of Commerce] and the provisions of the Arbitration Act 1950 and any statutory modifications or re-enactment thereof for the time being in force shall apply to such arbitration.

IN WITNESS, *etc.*

FORM 35

Form of Legal Charge suitable for use by mortgagees where several possible alternative methods of repayment are offered and with provision for a surety

THIS LEGAL CHARGE is made the —— day of —— One thousand nine hundred and —— BETWEEN (1) —— (herein called "the Borrower" which expression where the context so admits shall include the persons deriving title under the Borrower) ( ) —— [*name and address of surety if any* (hereinafter called "the Surety"] and —— of *etc.* (herein called "the Lenders" which expression where the context so admits shall include the persons deriving title under them).

WHEREAS:—

(1) The land described in the First Schedule hereto together with the buildings erected or hereafter to be erected thereon and all fixtures and additions thereto respectively is herein called "the mortgaged property."

(2) The Borrower is the owner of a legal estate in the mortgaged property free from incumbrances except such (if any) as may be hereinafter mentioned.

(3) The Borrower has requested the Lenders to make the advance hereinafter mentioned which the Lenders have agreed to do upon the terms hereinafter appearing.

Definitions.

(4) The following expressions used in this Deed shall have the meaning assigned to each of them below:—

(a) "capital repayment mortgage": a mortgage which is so described at the head of the Second Schedule hereto;

(b) "interest only mortgage": a mortgage which is so described at the head of the Second Schedule hereto;

(c) "fixed interest rate mortgage": a mortgage which is so described at the head of the Second Schedule hereto;

(d) "fixed period mortgage": a mortgage which is so described at the head of the Second Schedule hereto;

(e) "the principal sum": the sum shown in Column 1 of the Second Schedule hereto (which expression shall include the

principal moneys from time to time owing upon the security of this Deed);

(f) "the date of advance": the date shown in the said Column 1;

(g) "the stated rate": the rate of interest shown in Column 2 of the Second Schedule hereto as varied from time to time in accordance with the provisions of Clause 2 hereof (if applicable) or otherwise;

(h) "the monthly instalment": the sum shown in Column 3 of the Second Schedule hereto as varied from time to time in accordance with the provisions of Clause 2 hereof (if applicable) or otherwise;

(i) "the capital repayment period": the period applicable to a capital repayment mortgage and described as such in Column 4 of the Second Schedule hereto as varied from time to time in accordance with the provisions of Clause 2 hereof (if applicable) or otherwise;

(j) "the commencement date": the date shown in the said Column 4 as the commencement of the capital repayment period;

(k) "monthly payment day": the twenty-first day of each month occurring during the continuance of this security;

(l) "the fixed period": the period described as such in the said Column 4.

(m) "the capital repayment table": a table applicable to a capital repayment mortgage (providing for the complete repayment of the principal sum by the end of the capital repayment period) and compiled by the Lenders on actuarial principles upon the basis of which the amount for the time being of the monthly instalment is calculated.

(5) This mortgage is of the kind or kinds described at the head of the Second Schedule hereto. Description of this deed.

Now in pursuance of the above-recited agreement and in consideration of the principal sum paid by the Lenders to the Borrower who hereby acknowledges the receipt thereof THIS DEED WITNESSETH as follows:—

1. THE Borrower HEREBY COVENANTS with the Lenders as follows:— Covenants to pay principal and interest.

(a) Contractual payment day.

(a) To pay to the Lenders on the day next following the date hereof the principal sum with interest thereon in the meantime at the stated rate from the date of advance.

(b) Interest only mortgage.

(b) If this deed be an interest only mortgage then if the principal sum shall not be so paid to pay to the Lenders interest at the stated rate on the principal sum by the monthly instalment payable on each monthly payment day THE first monthly instalment (apportioned if necessary) from the date of advance to the next succeeding monthly payment day to be paid on that day.

(c) Capital repayment mortgage.

(c) If this deed be a capital repayment mortgage and if the principal sum shall not be so paid then on each monthly payment day:—

(i) to pay to the Lenders the principal sum with interest thereon at the stated rate by the monthly instalment and within the capital repayment period (the monthly instalment comprising both principal and interest with yearly rests having been calculated in accordance with the capital repayment table);

(ii) if the commencement date be after the date of advance to pay to the Lenders interest only on the principal sum at the stated rate from the date of advance to the commencement date the first monthly payment thereof (apportioned if necessary) to be made on the monthly payment day next succeeding the date of advance;

(iii) if the commencement date be earlier than the date of advance then until the expiration of one year from the commencement date (when the monthly instalment shall commence to be payable) instead of the monthly instalment to pay to the Lenders the adjusted instalment comprising principal and interest calculated in the following manner that is to say: the principal shown to be payable according to the capital repayment table for the whole of the first year thereof shall be added to interest at the stated rate on the principal sum from the date of advance until the expiration of one year from the commencement date Such principal and interest shall be divided into such a number of equal parts (being not less than eight) (*a*) as the Lenders shall determine each of which shall be an adjusted instalment

(*a*) The intention underlying this limit is to avoid imposing an obligation to repay a year's capital within less than eight months.

PROVIDED that the rate of interest payable on any order or judgment which may be made or recovered under this deed shall be seven pounds per centum per annum.

Variation of interest provisions.

2. IT IS HEREBY AGREED AND DECLARED that notwithstanding anything hereinbefore contained if this deed be not a fixed interest rate mortgage then:—

(a) The Lenders may at any time or times and from time to time during the continuance of this security if and whenever the Lenders in their absolute discretion shall deem it desirable alter the stated rate the amount of the monthly instalment or other the instalment payable by the Borrower from time to time and the capital repayment period (if any) or any of such matters and in regard to any such alteration the following provisions of this clause shall have effect.

(b) The stated rate shall not be altered so as to exceed the rate of One Pound per centum over the Bank Rate current on the date when the alteration is decided on by the Lenders PROVIDED that whatever may be the Bank Rate current at the relevant time the stated rate shall not at any time be reduced by any such alteration below the minimum rate of Three Pounds Fifteen Shillings per centum per annum or be increased thereby above the maximum rate of Six Pounds Ten Shillings per centum per annum.

(c) The capital repayment period (if any) shall not exceed twenty-five years from the date of advance.

(d) Any alteration made from time to time in the stated rate or in the amount of the monthly instalment or in the capital repayment period (if any) shall be effected by a notice in writing (in this clause called "the Lenders' notice") served by the Lenders on the Borrower and any such alteration shall take effect and become operative if this deed be a capital repayment mortgage from the end of three months after service of the Lenders' notice and in any other case from the end of six months after such service.

(e) Notwithstanding anything hereinbefore in this clause contained if the Lenders shall at any time serve on the Borrower the Lenders' notice the Borrower shall be entitled (subject as

hereinafter provided) upon giving at least three months' notice in writing to the Lenders if this deed be a capital repayment mortgage or in any other case six months such notice of the Borrower's intention so to do to pay off the principal sum at the expiration of the notice so given by the Borrower PROVIDED as follows:—

(i) the Borrower shall be entitled to give such notice only in a case where the Lenders' notice specifies an alteration by way of increase in the rate of interest;

(ii) no such notice given by the Borrower shall be effective unless the same is served on the Lenders within fourteen days after the service on the Borrower of the Lenders' notice;

(iii) for the purposes of this paragraph (e) in the case of a capital repayment mortgage the amount still outstanding in respect of the principal sum at the relevant time shall be ascertained in accordance with the capital repayment table.

Charge by way of legal mortgage.

3. THE Borrower as Beneficial Owner HEREBY CHARGES by way of legal mortgage ALL THAT the mortgaged property and the legal estate of the Borrower therein with the payment to the Lenders of the principal sum interest and other moneys hereby covenanted to be paid by the Borrower subject to the rights incumbrances and matters referred to in the First Schedule hereto.

Borrower's Covenants.

4. THE Borrower HEREBY COVENANTS with the Lenders that during the continuance of this security:—

(a) The Borrower will to the satisfaction of the Lenders keep all buildings at any time or for the time being subject hereto in good and substantial repair and insured against loss or damage by fire aircraft storm and tempest and such other risks as the Lenders may determine in the name of the Lenders to the full insurable value thereof (as determined by the Lenders from time to time) in some insurance office of repute to be nominated by the Lenders and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week thereafter and

will deliver to the Lenders the policy of insurance and will on demand produce to the Lenders the receipt for every such payment AND all moneys received on any insurance whatsoever (whether or not effected in pursuance of this obligation to insure) in respect of any loss or damage to the mortgaged property or any part thereof shall if the Lenders so require (but subject to the terms of any lease under which the mortgaged property is held) be applied either in making good the loss or damage in respect of which the money is received or in or towards discharge of the principal sum and shall be held by the Borrower in trust for the Lenders.

(b) The Borrower will not transfer or demise or agree to transfer or demise the mortgaged property or any part thereof but will personally occupy the same.

(c) The Borrower will not without the consent in writing of the Lenders mortgage or charge or in any manner subsequently incumber the mortgaged property.

(d) If the mortgaged property is leasehold the Borrower will not surrender or agree to surrender the mortgaged property to any reversioner or merge or agree to merge the mortgaged property in any reversion.

(e) The Borrower will not without the previous consent in writing of the Lenders apply to the local authority for an improvement grant under the Housing Act 1949 (as amended from time to time) PROVIDED that the Lenders will grant such consent if the Borrower shall have obtained and given to the Lenders the written agreement of the local authority that it will accept repayment of the appropriate proportion of the improvement grant at any time during the currency of the statutory conditions in accordance with Section 24 of the said Act.

(f) The Borrower will pay and discharge and indemnify the Lenders against all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) and against all rents (if any) which shall be respectively assessed charged or imposed upon or payable in respect of the mortgaged property or any

part thereof by the Borrower or the Lenders or a receiver in respect thereof and will on demand produce to the Lenders the receipt for any such payment and if the Borrower shall at any time refuse or neglect to make such payments or to produce the receipt therefor to the Lenders on demand they may pay the same and all moneys expended by the Lenders under this provision shall be deemed to be properly paid by them.

(g) The Borrower will duly observe and perform (or upon default of the Borrower the Lenders shall be at liberty to perform) (i) all restrictive and other covenants and stipulations (if any) for the time being affecting the mortgaged property or any part thereof and (ii) all the covenants on the part of the Borrower as lessee and conditions contained in the Lease (if any) under which the mortgaged property or any part thereof is held AND will keep the Lenders indemnified in respect of all actions proceedings claims costs and damages occasioned by any breach of any of such covenants stipulations and conditions and any costs or damages incurred by the Lenders by reason of any such breach shall be deemed to be properly incurred by them.

(h) The Borrower will permit the Lenders or their agents with or without workmen and others at any time at convenient hours in the daytime to enter into the mortgaged property and examine the state and condition thereof and will forthwith repair and make good all defects and wants of reparation of which notice in writing shall be given to the Borrower by the Lenders.

(i) The Borrower will permit the Lenders once in every five years to instruct a surveyor or valuer to inspect and report on the mortgaged property at a fee not exceeding Five Guineas and all moneys paid by them for that purpose shall be deemed to be properly paid by them.

(j) No person shall be registered under the Land Registration Act 1925 or any Act amending or re-enacting the same as proprietor of the mortgaged property or any part thereof (if it be not already so registered) without the

consent in writing of the Lenders and the costs incurred by the Lenders of lodging from time to time a caution against registration of the said property shall be deemed to be costs properly incurred by them under this deed PROVIDED that this paragraph shall not apply if the mortgaged property shall immediately prior hereto have become vested in the Borrower by virtue of a transaction falling within Section 123 of the Land Registration Act 1925.

(k) The Borrower will not at any time pull down waste destroy or injure or in any manner or by any means lessen the value of the mortgaged property or any part thereof.

(l) The Borrower will not without the previous consent in writing of the Lenders erect place or make or cause or suffer to be erected placed or made any buildings or other works on the land charged by this deed or any part thereof or any additions alterations or improvements to the mortgaged property or any part hereof or make or cause or suffer to be made any material change in the use of the mortgaged property or any part thereof.

Lender's powers on default.

5. AT any time or times after the happening of any one or more of the following events namely:—

(a) If default shall be made by the Borrower in payment of:—

(i) the principal sum (but only after the expiration of a notice served by the Lenders on the Borrower in accordance with Clause 9 hereof (if applicable) and not under Clause 1 (a) hereof) or

(ii) any other moneys for the time being payable in accordance with the provisions of this deed other than those contained in Clause 1 hereof or

(iii) the monthly instalment or other instalment in accordance with Clause 1 hereof or

(iv) principal and/or interest in accordance with the provisions (if any) similar to those referred to in sub-paragraphs (i) (ii) and (iii) above contained in any deed made supplemental to or collateral with this deed or

(b) if default shall be made in the observance and/or

performance of any of the covenants other than those relating to the payment of principal and interest by the Borrower expressed or implied in this deed or in any deed made supplemental to or collateral with this deed or

(c) If the Borrower or any one or more of the persons included in that expression shall become bankrupt have a receiving order made against the Borrower or enter into any statutory or other composition or arrangement with the Borrower's creditors generally or

(d) Where any person is party to this deed as surety for the Borrower then if the Surety or any one or more of the persons included in that expression shall become bankrupt have a receiving order made against the Surety or enter into any statutory or other composition or arrangement with the Surety's creditors generally or

(e) If the mortgaged property or any part thereof or any chattels thereon belonging to the Borrower or any one or more of the persons included in that expression shall be taken in execution or

(f) If any chattels on the mortgaged property shall be taken under a distress for rent reserved by the Lease (if any) under which the mortgaged property or any part thereof is or may be held by the Borrower

THEN notwithstanding any covenant by the Borrower to pay the principal sum by instalments comprising principal and interest the whole of the principal sum (ascertained in accordance with the capital repayment table) shall be forthwith recoverable by the Lenders with interest thereon from the happening of such event or events at the rate of seven pounds per centum per annum and the Lenders may without any previous notice to or concurrence on the part of the Borrower:—

(1) Exercise the power of sale and the power of appointing a receiver conferred on mortgagees by the Law of Property Act 1925 or any Act amending the same (subject to any order of the Court thereby required) as if such powers had become exercisable under this deed and so that the power of sale may be exercised without the restrictions imposed by Section 103 of the Law of Property Act 1925.

(2) Enter into possession or receipt of the rents and profits of the whole or any part of the mortgaged property and generally manage the same at the discretion of the Lenders.

(3) Grant from time to time options to purchase of rights of pre-emption of the mortgaged property or any part thereof for such period for such consideration and upon such terms as the Lenders shall think fit.

(4) Effect any such insurance to any amount and carry out or authorise a receiver appointed by the Lenders to carry out upon the mortgaged property any such repairs amendments alterations or additions as the Lenders shall consider necessary or desirable for the maintenance protection or improvement of the mortgaged property and so that the Lenders in acting under this power shall not be deemed to be mortgagees in possession or become liable as such and all moneys incurred or paid by the Lenders or such receiver out of moneys provided by the Lenders under this provision shall be deemed to be properly incurred or paid by them.

(5) In extension of the statutory power demise or agree to demise the mortgaged property or any part thereof for such period at such rent and/or premium and upon such terms in all respects as the Lenders shall think fit.

(6) For any of the purposes aforesaid to enter into such contracts and employ such agents receivers workmen and others at such salaries commission or wages as the Lenders may think proper and all moneys paid or expenses incurred by the Lenders for any of such purposes shall be deemed to be properly paid or incurred by them.

PROVIDED that the powers in this deed contained shall be in addition and without prejudice to and not in substitution for any and all other powers and remedies vested in the Lenders by statute or otherwise for recovering or enforcing payment of the principal sum.

Authorised payments for protection etc. of the property.

6. THE Lenders may from time to time with the consent of the Borrower make such payments as they may consider expedient to any person including the Borrower or anyone acting at the Borrower's request or a subsequent mortgagee or

to any person acting on the instructions of the Lenders in connection with the protection preservation or improvement of the mortgaged property and all expenses incurred or moneys paid by the Lenders under this provision shall be deemed to be properly incurred or paid by them.

Transfer of mortgage. (1) Not on default.

7. (1) SUBJECT to sub-clause (2) of this Clause the Lenders may transfer the benefit of the security hereby created to any person and in such case the transferee shall have the benefit of all the covenants and provisions herein contained and may at any time thereafter exercise all rights powers and remedies of the Lenders hereunder AND (without prejudice to the said rights powers and remedies) such transfer shall take effect and be construed as if the same had been the original charge by way of legal mortgage for the principal sum and the interest due or to become due thereon and as if the Borrower had covenanted to pay the said moneys at the date of such transfer (in this Clause called "the transfer date") and also so long thereafter as any moneys remained owing to pay the transferee interest or principal and interest (as the case may be) upon the terms contained in Clause 1 hereof AND every statement of fact contained in such transfer shall as against the Borrower and in favour of the transferee be deemed conclusive and binding.

(2) On default.

(2) At any time or times after the happening of any one or more of the events set out in Clause 5 hereof then if this deed be a capital repayment mortgage the following provisions shall have effect in relation to the exercise by the Lenders of the power contained in sub-clause (1) of this Clause namely:—

(a) as from the transfer date Clause 1 (c) hereof shall cease to have effect;

(b) the amount outstanding in respect of the principal sum shall be ascertained in accordance with the capital repayment table;

(c) the principal sum ascertained in accordance with the last preceding paragraph shall bear interest from the transfer date at the stated rate such interest to be payable on each monthly payment day THE first such payment (apportioned if necessary) to be made on the monthly payment day next succeeding the transfer date.

(3) For the purposes of this Clause a statement in writing by or on behalf of the Lenders of the amount of the principal sum shall in favour of a purchaser transferee or other person dealing with the Lenders not having actual notice to the contrary be absolutely conclusive evidence for all purposes of the truth of that stated fact.

Charge of expenses.

8. THE Borrower will on demand repay to the Lenders all costs charges claims damages expenses and other moneys properly paid or incurred by the Lenders under this deed together with interest thereon from the time of paying or incurring the same until repayment at the rate of seven pounds per centum per annum and until so repaid the same shall be charged upon the mortgaged property and shall be added to the principal sum and interest thereon as aforesaid shall be charged upon the mortgaged property and shall be payable by equal monthly payments at the same time as and together with the interest payable on the principal sum PROVIDED that the charge hereby conferred shall be in addition and without prejudice to and not in substitution for any and every other remedy lien or security which the Lenders may or but for the said charge would have for the moneys thereby secured or any part thereof.

Repayment of principal on six months' notice (not applicable to capital repayment mortgage)

9. IF this deed be not a capital repayment mortgage THEN :—

(a) By Lenders.

(a) subject to Clause 10 (1) hereof (if applicable) the Lenders may serve on the Borrower a notice in writing requiring payment of the principal sum on the expiration of six months from the service thereof notwithstanding that no default shall have been made by the Borrower in the observance and performance of the provisions of this deed;

(b) By Borrower.

(b) subject to Clause 10 (2) hereof (if applicable) and to the right of the Lenders to consolidate mortgage securities the Borrower may serve on the Lenders a notice in writing of the Borrower's intention to pay off the principal sum on the expiration of six months from the service thereof.

PROVIDED that the service of a notice under this Clause shall not release the Borrower from liability to pay any of the instalments payable by the Borrower in accordance with the provisions of this deed prior to the expiration of such notice but the

Borrower's liability shall continue in all respects as if such notice had not been given.

Fixed period provisions.

10. IF this deed be a fixed period mortgage THEN:—

(1) If:—

(a) the power of sale applicable hereto (which notwithstanding this present provision and without prejudice thereto shall be deemed to arise on the day next following the date hereof) shall not have become exercisable and

(b) the right of redeeming this security shall remain vested in each and every of the parties (if more than one) of the one part or first part and

(c) the person named as the life assured in any policy of assurance mortgaged collaterally with this deed shall not have died and

(d) no order for the compulsory acquisition of the mortgaged property or any part thereof shall have been made and confirmed

THEN a notice served by the Lenders under Clause 9 (a) hereof shall be given to expire not earlier than the expiration of the fixed period.

(2) Subject to Clause 2 (e) of this deed (if applicable) a notice served by the Borrower under Clause 9 (b) hereof shall be given to expire not earlier than the expiration of the fixed period.

Consolidation.

11. THE restriction on the right of consolidating mortgage securities which is contained in Section 93 of the Law of Property Act 1925 shall not apply to these presents.

Joint Borrowers (or Sureties).

12. WHERE there are two or more persons included in the expression "the Borrower" (or "the Surety" if any) then covenants expressed to be made by the Borrower (or the Surety as the case may be) shall be deemed to be made by such persons jointly and severally.

Service of notices.

13. SECTION 196 of the Law of Property Act 1925 as to service of notices shall for the purposes of this deed be deemed extended as follows:—

(a) In the case mentioned in Clause 12 hereof service on any one or more of the persons therein referred to shall be deemed service upon the Borrower (or the Surety as the case may be).

(b) Any notice required or authorised by the said Act or this deed to be served by the Lenders shall be sufficiently served if it is sent by post in a stamped envelope addressed to the Borrower at the place of abode or business of the Borrower last known to the Lenders or at the address of the mortgaged property AND proof of posting shall be proof of service.

Surety's covenants.

14. WHERE any person is a party to this deed as Surety for the Borrower then the Surety HEREBY COVENANTS and agrees with the Lenders in the terms of all the covenants by the Borrower and the agreements hereinbefore contained and such covenants shall operate and take effect in all respects as joint and several covenants by the Borrower and Surety with the Lenders and the said agreements shall be binding as well on the Surety as on the Borrower WITHOUT prejudice to the rights of the Surety against the Borrower as principal debtor the Surety shall as between the Surety and the Lenders be deemed a principal debtor under the foregoing covenants by the Surety and not merely a Surety and accordingly shall not be discharged nor shall the Surety's liability be affected by any act thing omission or means whatever whereby the Surety's liability would not have been discharged if the Surety had been a principal debtor.

IN WITNESS whereof the Borrower (and the Surety) ha hereunto set hand/s and seal/s the day and year first above written.

THE FIRST SCHEDULE

ALL THAT—hold property shortly described below and comprised in the document(s) particulars whereof are also specified below TOGETHER with the benefit of but subject to such rights easements covenants stipulations conditions rents rentcharges and other matters (if any) as are contained referred to or implied in or reserved by such document(s) so far as the same are still subsisting and relate to the mortgaged property and are capable of being enforced.

Particulars of Property.

Particulars of Document(s).

Date.	Description.	Parties.	Remarks (if any).

The Second Schedule

Description of this Mortgage (see Recitals (4) and (5)):

Column 1.
Principal sum:

Date of advance:

Column 2.
Interest rate per centum per annum:

Column 3.
Monthly instalment:

COLUMN 4.	
The capital repayment period:	The fixed period:
Years:	Years:
From:	From:

SIGNED SEALED AND DELIVERED by the Borrower in the presence of

—— —— *etc.* hereby acknowledges that they have this —— day of —— One thousand nine hundred and fifty—— received the sum of £—— representing the balance remaining owing in respect of the principal money secured by the within written Legal Charge and by the Deed(s) (if any) short particulars of which are specified below together with all interest and costs the payment having been made by the within named

THE COMMON SEAL *etc.*

FORM 36

Settlement upon the Settlor's grandchildren of investments consisting mainly of shares in the Settlor's private company with suitable provisions concerning investment of trust moneys and position of the Trustees

THIS SETTLEMENT is made the —— day of —— BETWEEN A B of *etc.* (hereinafter called "the Settlor") of the one part and [*names and descriptions of trustees*] (hereinafter called "the Trustees" which expression shall where the context admits include the survivors or survivor of them or other the trustees or trustee hereof for the time being of these presents) of the other part

WHEREAS:—

(1) The Settlor being desirous of making such provision as is hereinafter contained for the benefit of his grandchildren [*naming them*] who were born respectively on the —— day of —— 19— the —— day of —— 19— and *etc.* (and who are collectively hereinafter called "the beneficiaries") has caused to be transferred into the joint names of the Trustees the moneys stocks shares and investments set out in the Schedule hereto to which moneys stocks shares and investments the Settlor was immediately before such transfer entitled for his own benefit and the Trustees have consented to become trustees thereof upon the trusts and subject to the provisions hereinafter expressed

(2) The Settlor intends that this Settlement shall be absolutely irrecoverable in all circumstances

NOW THIS DEED WITNESSETH that the Settlor hereby irrevocably directs and it is hereby agreed as follows:—

1. THE Trustees shall stand possessed the said moneys stocks shares and investments so transferred to them as aforesaid UPON TRUST that they may either allow the same to remain in their present state of investment so long as they may in their absolute discretion think fit or may at any time or times again in their absolute discretion realise the said moneys stocks shares and investments or any of them or any part thereof respectively and

shall with the like discretion invest the moneys produced thereby and also any capital moneys which may be or become subject to the trusts of this Settlement in their names in or upon any of the investments hereby authorised with power as aforesaid to vary or transfer any investments for or into others of any nature hereby authorised (all of which said moneys stocks shares and investments so transferred to the Trustees as aforesaid and the investments moneys or property for the time being representing the same or which may be or become subject to the trusts hereby declared concerning the capital of the property hereby settled are hereinafter called "the Trust Fund" which expression is intended to mean the constituents for the time being of the said Fund) and the Trustees shall henceforth hold the Trust Fund and the income therefrom upon the trusts and subject to the powers and provisions hereinafter expressed concerning the same.

2. THE Trustees shall stand possessed of the Trust Fund upon the following trusts that is to say:—

(1) UPON TRUST during the minority or respective minorities of the beneficiaries or any of them (hereinafter referred to as "the said period") to pay or apply the whole or such part as they shall think fit of the income of the Trust Fund as it shall arise to or for or towards the maintenance education advancement or benefit of all or such one or more exclusively of the other or others of the beneficiaries and the children of any deceased beneficiary for the time being in existence (whether born at the date hereof or born hereafter) in such proportions and manner as the Trustees shall in their absolute and uncontrolled discretion from time to time think fit

(2) SUBJECT to the trusts hereinbefore contained and during the said period UPON TRUST to accumulate any income which may not be applied as aforesaid in the way of compound interest by investing the same and the resulting income thereof from time to time in any investments authorised by law or by this deed and the Trustees shall hold such accumulations as an accretion to the capital of the Trust Fund Provided that the Trustees may at any time during the accumulative period

aforesaid apply the whole or any part of such accumulations as if the same were income arising in the then current year

(3) After the expiration of the said period UPON TRUST as to both the capital and income of the Trust Fund and any accumulations as aforesaid for such one or more of the beneficiaries then living who shall have attained or shall thereafter attain the age of 21 years and the children of any then deceased beneficiary and if more than one as tenants in common in equal shares but so that the children of any deceased beneficiary shall take equally between them as tenants in common only the share which their parent would have taken had he or she attained a vested interest.

3. TRUST moneys falling to be invested under the trusts hereof may be invested or applied in the purchase of or at interest upon the security of such stocks funds securities or other investments or property of whatever nature and wheresoever situate (including the purchase and/or improvement of a freehold or leasehold dwelling-house for use as a residence) and whether involving liability or not or upon such personal credit with or without security as the Trustees shall in their absolute discretion think fit as if they were absolute owners beneficially entitled to such trust moneys and without prejudice to the generality of the foregoing it is hereby declared that trust moneys may be invested or applied in any of the following ways, namely:—

(1) In or upon the stocks funds shares debentures mortgages or securities of any private or public company incorporated or registered in the United Kingdom including any holding company

(2) Upon loan to or deposit with any natural person or private or public company incorporated or registered in the United Kingdom including any holding company

PROVIDED ALWAYS that during the lifetime of the Settlor the consent in writing of the Settlor shall first be obtained before any money may be applied or invested as aforesaid.

4. NOTWITHSTANDING anything to the contrary hereinbefore expressed or implied no discretion or power conferred by this deed on any person or on the Trustees shall be exercised so as to

cause any part of the income or capital of the Trust Fund or any other benefit whatsoever to become payable or applicable for the benefit of the Settlor or any wife of the Settlor or save as provided by any of the three clauses next following for any person for the time being a trustee of this deed.

5. (1) A trust corporation may at any time be appointed to be a trustee or the sole trustee of this deed

(2) Where any trust corporation (other than the Public Trustee) is appointed as aforesaid it may charge and be paid such reasonable remuneration and charges as shall be agreed in writing prior to or upon such appointment between the person or persons making such appointment of the one part and the trust corporation of the other part.

6. ANY trustee for the time being hereof being a solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or proper charges for business transacted time expended and acts done by him or his firm in connection with the trusts hereof including matters which might or should have been attended to in person by a trustee not being a solicitor or other person so engaged.

7. ANY Trustee for the time being hereof may act as an officer or employee of any company shares or debentures of which form part of the Trust Fund or as an officer or employee of any subsidiary company of any such company and may retain for himself any remuneration which he may receive as such officer or employee notwithstanding that any votes or other rights attached to any such shares or debentures may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for him his position as such officer or employee or that his qualification for any such position may be constituted in part or in whole by the holding of any such shares or debentures.

8. THE power of appointing a new trustee or new trustees hereof shall be vested in the Settlor during his life but the Settlor shall in no circumstances be appointed a trustee hereof.

THE SCHEDULE ABOVE REFERRED TO

IN WITNESS, *etc.*

BIBL.
LONDIN.
UNIV.

INDEX

TO THE CONVEYANCER, VOLUME 21

ACCUMULATIONS,
beyond statutory period, 293
perpetuities, 295

ADEMPTION,
bequest of shares, 73
election or, 70

ADOPTION,
wills, conflict of laws, 237, 391

ADVANCEMENTS,
intestacy, 74, 309

AGREEMENT,
for sale of land with contract to build house thereon, **651**
for servicing of machinery, **719**

AGRICULTURAL HOLDINGS,
grazing agreement, 310
notice to quit, 95
repairs, 239
tenancy for 1½ years, **685**
tenancy from year to year, **683**

AMERICAN BAR ASSOCIATION,
convention in London, 325

APPOINTMENT OF NEW TRUSTEES,
after completion of administration, 390

ASSETS,
implied, leaseholds, 167

AUCTIONEERS,
mortgagee instructing, 68

BANKRUPTCY,
discretionary trusts, 61
protective trusts, 110

BILLS OF EXCHANGE,
endorsement of cheques, 345

BOUNDARIES,
line of hedge, 303
projections, 164
registered land, 162, 477

CAPITAL AND INCOME,
long leases, 307
planning compensation, 388

[*Black figures indicate Precedents.*]

CARAVANS,
licence to park, **707**

CHARITIES,
alphabet reform, 235
education, 72
merger, lapse, 165
music, 234
non-existent institution, 236

CHEQUES,
indorsement, 345, 489

COMPANIES,
agreement between shareholders to secure that control shall remain with them or survivor, **721**
alternate directors, 381, **746**
contracts by parol, 465
loan secured by deposit of shares and blank transfer, **712**
overseas trade corporations, 378
service agreement for managing directors, **752**
shares, nature of, 433

COMPULSORY PURCHASE,
abandonment of notice to treat, 394
compensation for disturbance, 393
fraud, 455
invalid order, 248

CONFLICT OF LAWS,
adoption, 237, 391
power of appointment, 233

CONTRACT,
company, 465
estimate, payment for, 396

COPYRIGHT,
assignment, 33
breach of confidence, 47
broadcasts, 46
conditions, 27
Copyright Act, 1956...25
Crown, 45
dramatic and musical performers' protection. 45
education, 46
exceptions, 34
false attribution of authorship, 46
industrial designs, 43
infringement, 34, 37
licences, 33
operation of 1956 Act, 41
ownership, 31
Performing Right Tribunal, 38
rights comprised in, 30
term, 29

COUNTY COURT,
mortgages, 385

COVENANTS,
not to assign, **749**
running with land, 160

[*Black figures indicate Precedents.*]

CUSTOMS AND EXCISE,
Finance Act, 1957...356

DEATH DUTIES,
Finance Act, 1957...366
gifts, disclaimer, 487
inter vivos, 366
within five years, 5, 83
insurance policy, 246
sale of land, 65

DISCRETIONARY TRUSTS,
assignments, 61
bankruptcy, 61
bare powers and powers in nature of trust, 56
contractual rights to payments, 57
control by court, 58
nature and purposes, 55
perpetuities, 63
statutory, 63

DIVORCE AND MATRIMONIAL CAUSES,
maintenance agreements, 348
income tax, 365
matrimonial home, 125

EASEMENTS,
registered land, 471

EDUCATION,
charities, 72

ELECTION,
gift of property in which testatrix had life interest, 69
subsequent disposition *inter vivos*, 70, 304
Wills Act, 1837...152

EQUITABLE INTERESTS,
mere equities, 195

ESTOPPEL,
exhibition of advertising sign, 312

EXECUTORS AND ADMINISTRATORS,
appointment of trustees after completion of administration, 390
cumulative or substitutional legacy, 391
dependant's claim under statute not assets of estate, 481
revocation of grant, 75

FAMILY ARRANGEMENT,
deed whereby husband takes estate subject to obligation to devise house to daughter, **749**
release between members of family company, **659**

FINANCE ACT, 1957,
effect of, 356

FLATS,
entry of easement on register, 471
income tax, 4, 80, 179, 364
lease, **671**
restrictive covenants, 6
road charges, 178, 256

[*Black figures indicate Precedents.*]

FORESTRY,
lease, 259, **698**

FRAUD,
compulsory purchase, 455

FRIENDLY SOCIETIES,
registered land, 473

GAS,
redevelopment, cost of laying new gas mains, 394

GIFTS,
death duties, Finance Act, 1957...366
disclaimer, 487
investigation of title, 402
within five years, 5, 83

HIGHWAYS,
new streets, 346
private street works, 416
public right of way, 232, 302
redevelopment, cost of laying new gas mains, 394
repair, railways, 232
road charges, flats, 178, 256

HUSBAND AND WIFE,
disputes as to property, 175, 388
maintenance agreements, 348
income tax, 365
matrimonial home, **125**

INCOME TAX,
child allowance, 360
deposit account, 313
earned income, 359
expenses of management, life assurance society, 484
Finance Act, 1957...357
flats, 4, 80, 179, 364
gift by shareholders, 81, 315
maintenance payments, 365
old age relief, 359, 361
overseas trade corporations, 378
premiums for pensions for directors, 485
repairs, 173

INFANTS,
court's power to deal with interests of, 448
deed of covenant for benefit of, 325
income tax, child allowance, 360
interests postponed after majority, 293
right to receive property under trust instrument, 72
service agreement, **734**
settlement, surtax, 244, 314

INSURANCE,
death duties, 246
spread of fire, 92

INVESTMENT CLAUSE,
ordinary preferred stock, 165

[*Black figures indicate Precedents.*]

JOINT TENANCY,
statutory declaration that not severed, **691**

LAND,
meaning of, in administrative statutes, 141

LAND CHARGES,
searches, 89
time for, 403

LANDLORD AND TENANT,
covenant not to assign or underlet, 239
dangerous premises, 343
forfeiture, 79
improvements, 264
claim for, **729**
notice to superior landlord, **731**
reply to, **730**
notice to quit, 260, **729**
variable rents, 265

LANDLORD AND TENANT ACT, 1954,
amount of rent, 78
date of expiry of tenancy, 77
intention to demolish, 404
intention to occupy, 77
joint landlords, 169
lease for three years of business premises to avoid, 257, **723**
members' club, 311
reconstruction, 168, 169, 311, 404
signature of notice, 483
surrender of current tenancy, **668**
tenancy as well, 78

LEASE,
advertising sign protruding into air-space, 312
assignment by mortgagee, **738**
avoiding operation of Landlord and Tenant Act, 1954...257, **723**
covenant not to assign, **749**
flat, **671**
forestry, 259, **698**
registered land, 474

LEASEHOLD PROPERTY (REPAIRS) ACT, 1938,
assignment, 392
mortgagee, 79

LEASEHOLDS,
capital and income, 307
implied assent, 167

LICENCE,
parking of caravan, **707**

LIMITATION OF ACTIONS,
registered land, 385

LOANS,
secured by deposit of shares and blank transfer, **712**

MAINTENANCE,
agreements, 348
income tax, 365

MATRIMONIAL HOME,
proposals of Royal Commission, 125

MEDICAL PARTNERSHIPS,
division of patients, 53
drafting of deeds, 49
partner outside service, 52
payment for assets other than goodwill, 51
restrictions on practice, 54
sale of goodwill, 50
superannuation, 53

MORTGAGES,
alternative methods of repayment, **756**
assignment by mortgagee under power of sale where underlease granted by him, **738**
auctioneer instructed by mortgagee, 68
Leasehold Property (Repairs) Act, 1938...79
loan secured by deposit of shares and blank transfer, **712**
possession, 68, 229, 230, 385, 386, 488
release of one of several sureties, **656**
second charge deferring payment of interest until capital repaid, **686**

NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE,
rights of way, 232, 302

NEGLIGENCE,
occupiers' liability, 340
solicitor, duty as to wills, 177, 248, 326, 397

NEW STREETS,
New Streets Act, 1951 (Amendment) Act, 1957...346

OPTION TO PURCHASE,
assignment, 482

PERPETUITIES,
accumulations, 295
determinable interests, 213
discretionary trusts, 63
Law Reform Committee, 2

PLANNING,
compensation, capital money, 388
enforcement notice, 174, 180, 248, 395
operational land of statutory undertaker, 395
restrictive covenants, 23
withdrawal of permission, 394

POWER OF APPOINTMENT,
exercise by residuary gift, 233
special power, 305

PRELIMINARY INQUIRIES,
new form, 255

PRIVATE STREET WORKS,
adoption of street, 425
contribution and apportionment, 418
enforcement of liability, 424

[*Black figures indicate Precedents.*]

PRIVATE STREET WORKS—*continued*
final apportionment, 424
greater hardship, 432
improvements, 431
making up in stages, 418
objections, 419
Public Health Act, 1875...416
sewering, 421
street widening, 417

PROFITS TAX,
trading loss, 246

PROTECTIVE TRUSTS,
bankruptcy, 110

PUBLIC AUTHORITIES,
judicial control of discretionary powers, 202

PURCHASE TAX,
Finance Act, 1957...357

RAILWAYS,
repair of highways, 232
right of way, dedication, 302

RATING,
Rating and Valuation Act, 1957...254

RECITALS,
by-law approval, **651**...
legal charges, **656**
planning permission, **651**
seisin, **651**, **656**, **744**
suretyship, **656**

REGISTERED LAND,
address of registry, 328
adjudication of stamp duty, 476
boundaries, 162, 477
cancellation of notice of control of sale, 473
compulsory areas, 92, 328
easements, 471
first registration, 90
flats, entry of easements on register, 471
friendly societies, 473
indemnity covenants, 472
leases, 474
overriding interest, 385
positive covenants, 472
report for 1956–1957...401
restrictive covenants, 470
searches on behalf of purchaser and chargee, 475
sub-sales and resales, office copies and searches, 469
time for searches, 403

RELEASE,
one of several sureties, **656**

RENT RESTRICTION,
adjustments in respect of services and furniture, 429, **727**, **728**
agreement as to rateable value, **732**
giving reasonably equivalent security of tenure, **726**

[*Black figures indicate Precedents.*]

RENT RESTRICTION—*continued*
alternative accommodation, 299
agreement for, **725**
dates under Rent Act, 1957...253
death of tenant, 240, 481
decontrol, 262
false evidence, 241
fitness for habitation, 393
furnished premises, 242, 243
greater hardship, 330
improvements, 430
internal decorative disrepair, 331
landlord by purchase, 329
notice of increase, 337
order for possession in absence of tenant, 241
private street works, 431
rates, adjustments in respect of, 427
Rent Act, 1957...260, 329
rent less than two-thirds rateable value, 167
rent limits, 261, 332, 427, **732**
service tenancy, 76

RESTRICTIVE COVENANTS,
alcohol, 13
annexation of benefit, 386
change of user, 12, 13
churches and church halls, 16
compensation never awarded by tribunal, 10
costs, 17, 387
court or tribunal, 18
crowds, 14
declaration that land no longer affected, 231
density, 13
discharge and modification, 6
discretion of tribunal, 8
flats, 6
modification, 479
mental defectives, 15
new construction, 12
noises, 14
notices, 20, 22
objectors, 20, 387
planning, 23
proposed user not causing disturbance, 16
registered land, 470
smells, 14
temporary modification, 9

RESTRICTIVE TRADE PRACTICES,
notice of condition, 249

RESULTING TRUST,
surtax, settlement on children, 244

RETIREMENT BENEFITS,
annual premium contracts, 118
Law Society, 1
return of premiums with interest, 119
reversionary annuities to dependants, 118
self-employed, 117
single premium contracts, 118
with profits contracts, 117

RIGHTS OF WAY,
public, 232, 302

ROAD CHARGES,
flats, 178, 256

SERVICE AGREEMENT,
managing director, **752**

SETTLEMENTS,
investment clause, 165
on grandchildren of shares in private company, **772**
on trusts of existing settlement, **743**
surtax, 244, 314

SOLICITORS,
conveyancing costs, 93
wills, duty as to, 177, 248, 326, 397

SPECIFIC PERFORMANCE,
delay, 66
misdescription, 67

STAMP DUTIES,
adjudication, registered land, 476
companies, 172

STATUTORY DECLARATION,
no severance of joint tenancy, **691**

SURRENDER,
of current tenancy, **668**

SURTAX,
bonus issue, 245
directions, 327
Finance Act, 1957...362
investment company, apportionment, 171
settlement on children, 244, 314
power to determine, 486

TRESPASS,
advertising sign, 312

TRUSTS,
court's power to deal with interests of infants, 448
for paying debts, 280
uncertainty, 71, 303, 306

WAR DAMAGE,
builder's estimate, payment for, 396

WILLS,
absolute gift and purported gift over, 166
acceleration, 480
disclaimer, 308
accruer, 74, 224
ademption, 70, 73

[*Black figures indicate Precedents.*]

WILLS—*continued*
adoption, 237, 391
class gift, 237, 391
cumulative or substitutional legacy, 391
gift to brothers in enemy territory or their issue, addresses unknown, **741**
gift to children for life and then to their children, **693**
interests postponed after majority, 293
intestate successors, 306
omission, 308
postponement of vesting in grandchildren until 25...**715**
shares absolute though settled, 220
shares, bequest of, 70
solicitor's duty, 177, 248, 326, 397

[*Black figures indicate Precedents.*]

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ARTICLES

CONVEYANCER'S NOTEBOOK 1

DISCHARGE AND MODIFICATION OF RESTRICTIVE COVENANTS—II G. H. Newsom 6

THE COPYRIGHT ACT, 1956 ... ... D. H. Mervyn Davies 25

THE DRAFTING OF MEDICAL PARTNERSHIPS ... E. H. Bodkin 49

DISCRETIONARY TRUSTS ... ... L. A. Sheridan 55

NOTES OF RECENT CASES 65

LIBRARY 84

PRECEDENTS

See List Overleaf

SWEET & MAXWELL

PRECEDENTS

Agreement for the sale (by way of long lease) of a Plot of Land with contract to build a House thereon 651
Deed releasing one of three joint and several sureties of several mortgages affecting respectively different properties and substituting a new surety in his place 656
Deed of Family Arrangement and Release Between Members of a Family Company (husband and wife) and Accompanying Trust Deed ... 659
Surrender by Tenant to the Landlord of a "Current Tenancy" within the meaning of Section 26 (1) of the Landlord and Tenant Act, 1954 ... 668

TABLE OF CASES NOTED

Arthur McDougall Fund, *Re*, 72
Atkinson's Will Trusts, *Re*, 74
Austin Reed, Ltd. *v.* Royal Insurance Co., Ltd. (No. 2), 77
Bolton (H. L.) (Engineering) Co., Ltd. *v.* Graham (T. J.) & Sons, Ltd., 77
Bridges *v.* Hewitt, 81
Church Commissioners for England *v.* Ve-Ri-Best Manufacturing Co., Ltd., 79
Dicey (deceased), *Re*, 69
Driscoll *v.* Church Commissioners for England, 79
Duncan *v.* Hay, 76
Edwards (deceased), *Re*, 70
Gatehouse *v.* Vise (Inspector of Taxes), 80
Hayward, *Re*, 74
Le Witt *v.* Brookes, 78
Manning *v.* Turner, 65
Meacock (John) & Co. *v.* Abrahams, 68
Quibell's Will Trusts, *Re*, 73
Robertson *v.* Cilia, 68
Sayer Trust, *Re*, 71
Somech (deceased), *Re*, 72
Stratton's Disclaimer, *Re*, Stratton *v.* C. I. R., 83
Thomas, *In the Estate of*, 75
Watson *v.* Burton, 67
Wheeler *v.* Mercer, 78
Williams *v.* Greatrex, 66

EDITORIAL NOTE

Subscribers and others are invited to submit for consideration by the Editor of the Journal articles or letters on matters of interest to the profession. Any useful or unusual precedents will also be welcome for publication in the Supplement. All communications should be addressed to THE EDITOR, THE CONVEYANCER AND PROPERTY LAWYER, 3 CHANCERY LANE, LONDON W.C.2.

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